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Alamance, NC
DAVID J.P. BARBER REGISTER OF DEEDS
BK 2795 PG 535-565

STATE OF NORTH CAROLINA **CONSERVATION EASEMENT**
ALAMANCE COUNTY
SPO File Number 01-AAAG
EEP # 92372
Prepared by and return to:
Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT DEED, made this ___ day of _____, 2009, by the City of Burlington, ("**Grantor**"), 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, 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 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

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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 Alamance County, North Carolina (the "**Property**"), and being more particularly described as that certain parcel of land containing approximately 64.83 +/- acres, **PIN# 8864790671,** and conveyed to the Grantor by deed as recorded in **Deed Book 98 at Page 220 and Deed Book 136 at Page 46** of the Alamance County Registry, North Carolina; further identified as "Burlington Park," and,

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Property, thereby restricting and limiting the use of the included areas of the Property to the terms and conditions and purposes hereinafter set forth, and Grantee is willing to accept such Conservation Easement. This Conservation Easement shall be for the protection and benefit of the waters of Little Alamance Creek and its tributaries.

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 described area of the Property, referred to hereafter as the "**Easement Area**", for the benefit of the people of North Carolina, and being all of the tracts of land containing **7.06 +/- acres** as shown on a plat of survey entitled "Conservation Easement Survey for the State of North Carolina, Ecosystem Enhancement Program, Little Alamance Creek at Burlington Park" dated May 1, 2008 and final revision July 15, 2008, certified by Landmark Surveying, PLS, and **recorded in Map Book** 73 **, Page** 122 **,** Alamance County Registry. The Conservation Easement Areas being more particularly described below. See "**Exhibit A**" for legal text.

Conservation Easement Areas:

Area "A" - containing 0.46 +/- acres	
Area "B" - containing 1.83 +/- acres	
Area "C" - containing 1.10 +/- acres	
Area "D" - containing 0.59 +/- acres	
Area "E" - containing 0.99 +/- acres	
Area "F" - containing 0.16 +/- acres	
Area "G" - containing 1.20 +/- acres	
Area "H" - containing 0.73 +/- acres	
Total	7.06 +/- acres

I. PURPOSE

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:

II. DURATION OF EASEMENT

Pursuant to law, including the above referenced statutes, this Conservation Easement shall be perpetual and it shall run with, and be a continuing restriction upon the use of, the Property, and it shall be enforceable by the Grantee against the Grantor and against Grantor's heirs, successors and assigns, personal representatives, agents, lessees, and licensees.

Comment: NC Gen. Statute does not allow for reversion. Paragraph below suggested as an alternative.

III. WARRANTY PERIOD

For purposes of this Conservation Easement, **warranty period** is hereby defined as a five-year period beginning with completion of construction of the improvements by Grantee and ending after a five-year period. If success criteria are not met within five years, the warranty period will be extended until success criteria are met. During the warranty period, Grantee shall be solely responsible for project maintenance and monitoring. However, Grantor may, at the discretion of the Grantee, participate in maintenance activities. After the warranty period, Grantor may, at its sole discretion, maintain the project in the same functional state as existed on the last day of the warranty period.

IV. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

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 Grantor retains the right to maintain and repair, as well as the sole financial responsibility for the stormwater best management practices shown on the plat dated May

1, 2008 and final revision July 15, 2008 entitled "Conservation Easement Survey for the State of North Carolina, Ecosystem Enhancement Program, Little Alamance Creek at Burlington Park" recorded in Plat Book 73 Page 122 of the Alamance County Registry. Transfer of maintenance responsibilities to the City of Burlington and the maintenance plan are further described in a letter dated December 9, 2008 and attached hereto as "**Exhibit B**."

Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. Without limiting the generality of the foregoing, 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, bird watching, 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 exclusively for management, maintenance, or stewardship purposes, and on existing trails, paths or roads.

B. Educational Uses. The Grantor reserves the right to engage in and permit others 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. Except as related to the removal of non-native plants, diseased or damaged trees and vegetation that obstructs, destabilizes or renders unsafe the Easement Area, or except as necessary to control invasive and/or exotic species as described in the "Invasive Vegetation Maintenance and Herbicide Application Plan" attached to and referenced in the "Stormwater Level Spreader BMPs and Invasive Vegetation Maintenance Letter of Understanding for Little Alamance Creek Stream Restoration Project dated December 9, 2008" and shown as "**Exhibit B**", or except as necessary to provide for the other expressly allowed uses in the conservation easement, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited. All vegetative cutting shall be done in a manner that maintains the integrity of the Conservation Easement.

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. New Construction. There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed in the Easement Area.

G. Roads and Trails. There shall be no construction of roads, trails, walkways, or paving in the Easement Area. Existing roads or trails located in the Easement Area may be maintained by Grantor in order to minimize runoff, sedimentation and for access to the interior of the Property for management, maintenance, stewardship purposes, or undeveloped recreational and educational uses of the Easement Area. Existing roads, trails or paths may be maintained with loose gravel or permanent vegetation to stabilize or cover the surfaces.

H. 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 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.

I. 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.

J. 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.

K. Water Quality and Drainage Patterns. There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or diverting, causing, allowing or permitting the diversion of surface or underground water. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns except within the designated Stormwater Best Management Practices (BMP) areas shown in Areas C, and E on the plat entitled "Conservation Easement Survey for the State of North Carolina, Ecosystem Enhancement Program, Little Alamance Creek at Burlington Park" dated May 1, 2008 and final revision July 15, 2008 recorded in Plat Book 73 Page 122 of the Alamance County Registry. 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 excepted as noted above in this paragraph is not allowed. All removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited. In the event of an emergency interruption or shortage of all other water sources, water from within the Easement Area may temporarily be used for good cause shown as needed for the survival of livestock and agricultural production.

L. Subdivision and Conveyance. Grantor voluntarily agrees that no subdivision, partitioning, or dividing of the underlying fee that is subject to this Easement is allowed. Unless agreed to by the Grantee in writing, any future conveyance of the underlying fee for the Easement Area and the rights as conveyed herein shall be as a single block of property. Any future transfer of the fee simple shall be subject to this Conservation Easement. Any transfer of the fee is subject to the Grantee's right of

unlimited and repeated ingress and egress over and across the Property to the Easement Area for the purposes set forth herein.

M. Development Rights. All development rights are removed from the Easement Area and shall not be transferred.

N. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural features of the Easement Area or any intentional introduction of non-native plants, trees and/or animal species is prohibited.

O. Utilities. Through, over, under and across the Easement Area, the following utility uses are allowed, conditioned as follows:

1) The City reserves a permanent **25** foot **sewer** easement within Easement Areas "A, B, C, F, and G" for its use in maintaining and repairing the City's existing **sewer** line. This easement is shown on the map entitled "Conservation Easement Survey for the State of North Carolina, Ecosystem Enhancement Program, Little Alamance Creek at Burlington Park" dated May 1, 2008 and final revision July 15, 2008, certified by Landmark Surveying, LLC and recorded in Plat Book 73 Page 122 of the Alamance County Registry. Vegetation within the **25** foot sewer easement shall not be cut lower than eight inches above ground level.
2) The City reserves a permanent **25** foot **water** easement within in Easement Areas "B and C" for its use in maintaining and repairing the City's existing **water** line. This easement is shown on the map entitled "Conservation Easement Survey for the State of North Carolina, Ecosystem Enhancement Program, Little Alamance Creek at Burlington Park" dated May 1, 2008 and final revision July 15, 2008, certified by Landmark Surveying, LLC and recorded in Plat Book 73 Page 122 of the Alamance County Registry. Vegetation within the **25** foot water easement shall not be cut lower than eight inches above ground level.
3) All disturbed facilities, features and vegetation will be restored to their original condition to the greatest extent reasonably practicable. Due to the environmental sensitivity of the Conservation Easement Area, any 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 Property achieves a rapid recovery from the disturbance. The permanent utility easement shall be planted with suitable grass vegetation which shall be restored when disturbed.
4) Corridor and clearing width for construction 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 vegetated with native herbaceous species at the completion of construction.
5) Pipeline and utility line construction will be minimized to the greatest extent reasonably practicable. Notwithstanding the foregoing, it is understood and agreed that: the use of pump stations and/or the installation of such lines at a depth greater than 15 feet are not reasonably practicable and shall not be

required to avoid or minimize pipeline construction subject to this Conservation Easement; and the use of motorized vehicles, including heavy equipment for construction and maintenance work, is necessary to construct, access and maintain pipelines subject to this Conservation Easement.

6) Corridor and clearing width for construction, access and maintenance will be limited to the minimum necessary to construct, access and maintain the needed facilities.

7) Creek crossings for pipelines or utility lines will be avoided at locations where there are structures in place for grade control, habitat improvement, and bank stabilization. If any disturbance occurs to Grantee's structures or improvements in the Easement Area as a result of construction or maintenance of pipelines or utility lines, the Grantor will ensure that the damaged structures and improvements are restored to their original condition to the greatest extent reasonably practicable.

8) Any features or vegetation disturbed as a result of the construction or maintenance of pipelines or utility lines within the Easement Area will be restored to their original condition to the greatest extent reasonably practicable using native trees, shrubs and herbaceous vegetation. Vegetative plantings must be completed during the next planting season following completion of the construction or maintenance activity and must comply with the mitigation plan specifications for the site.

9) Crossings of stream mitigation sites and any adjacent wetland areas shall be accomplished by utilizing directional drilling/ boring methods to the greatest extent reasonably practicable. Stream or wetland crossings that are not accomplished by directional drilling/boring methods must be perpendicular to the wetlands or streams to greatest extent reasonably practicable. Excavated crossings must be constructed in dry areas as much as reasonably possible using temporary coffer dams or similar structures. Coffer dams must consist of non-erosive materials or portable structures.

10) Erosion control devices must be utilized in conjunction with construction and maintenance work to contain all disturbed materials and conform to State requirements.

11) Utility corridors that must be constructed parallel to stream corridors must be at least thirty (30) feet from the top of stream bank unless explicit exception is granted by the Grantee. The area between the utility corridor and the top of stream bank must remain undisturbed except for creek crossings.

12) Reasonable signage may be erected to identify the owner of the pipeline and/or utility lines and to provide safety information.

V.. GRANTEE RESERVED USES

A. Ingress, Egress and Inspection. The Grantee, its employees and agents, successors and assigns, receive the perpetual right of unlimited and repeated ingress and egress to the Easement Area over the Property at 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 restoration activities or a long-term management plan. Unless otherwise specifically set forth in this Conservation Easement, the rights granted herein do not include or establish for the public any access rights.

B. Restoration Activities. 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 Grantee and authorized representatives of the Grantee shall provide prior notification to the Grantor of the construction schedule including but not limited to bid opening, award, notice to proceed, and pre-construction meetings. The easement rights granted herein do not include or establish for the public any 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 1652 Mail Services Center, Raleigh, NC 27699-1652.

VI. 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, their successors or assigns, that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor, their successors or assigns, 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 over the Property 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 the Grantor.

No Waiver. Enforcement of this Easement shall be at the discretion of the Grantee and any forbearance, delay or omission by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be construed to be a waiver by Grantee.

VII. MISCELLANEOUS

A. 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.

B. 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.

C. Grantor shall notify Grantee in writing of the name and address and any party to whom the 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 Property is conveyed subject to the Conservation Easement herein created.

D. 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.

E. This Conservation Easement may be amended, but only in 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.

F. 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.

VIII. QUIET ENJOYMENT

Grantor reserves all remaining rights accruing from ownership of the 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 the State of North Carolina 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.

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

City of Burlington

By: _____ (SEAL)

Title/Name (print): Ronnie K. Wall, Mayor

CITY OF BURLINGTON, N.C. SEAL

Attested by: Jondeen D. Terry

Title/Name (print): City Clerk

NORTH CAROLINA

COUNTY OF Alamance

I, Renee M. Ward, a Notary Public in and for the County and State aforesaid, do hereby certify that Jondeen D. Terry, personally appeared before me this day and acknowledged that she is City Clerk of the City of Burlington, and as the act of the City of Burlington, the foregoing instrument was signed in its name by its Mayor, sealed with its official seal and attested by herself as its City Clerk.

Witness my hand and notarial seal this 3rd day of February, 2009.

Renee M. Ward
Notary Public

Renee M. Ward
(Type or print Notary Public Name)

RENEE M. WARD NOTARY PUBLIC ALAMANCE COUNTY, N.C.

My commission expires:

5-30-2010

LANDMARK SURVEYING, INC. EAST 109 HARDEN STREET, GRAHAM, NC 27253
PHONE: 336-229-6275, FACSIMILE 336-227-5919
EMAIL: dylandmark@triad.rr.com

February 12, 2009

Exhibit A to Conservation Easement

Metes and Bounds description of, Conservation Easement for The State of North Carolina Ecosystem Enhancement Program, on property of The City of Burlington, known as the Little Alamance Creek at Burlington Park, SPO #001-AAAG, EEP #92372. Property situated in Burlington Township, Alamance County, North Carolina.

Conservation Easement Area "A"

Beginning at an new iron pin and cap, said pin and cap being located S 39°26'01" W – 60.99 feet from a work station control monument with NCGS NAD 83 co-ordinates N 849,626.62 E 1,864,965.29. Thence the following courses and distances:

N 70° 36'20" E - 36.93' to a new iron pin and cap
N 69° 20'21" E – 46.63' to a new iron pin and cap
N 59° 47'13" E – 57.06' to a new iron pin and cap
S 66° 39'20" E – 120.00' to a new iron pin and cap
S 29° 11'09" W – 117.30' to a new iron pin and cap
N 75° 57'38" W – 109.14' to a new iron pin and cap
N 48° 34'30" W – 99.84 to the point and place of beginning, containing 0.46 Acres more or less

Conservation Easement Area "B"

Beginning at an new iron pin and cap, said pin and cap being located S 73°35'08" E – 237.86 feet from a work station control monument with NCGS NAD 83 co-ordinates N 849,626.62 E 1,864,965.29. Thence the following courses and distances:

S 87° 58'42" E – 44.30' to a new iron pin and cap
S 66° 59'30" E - 201.06' to a new iron pin and cap
S 12° 59'37" W – 129.54' to a new iron pin and cap
S 30° 07'31" W – 70.72' to a new iron pin and cap
S 51° 20'17" W - 106.31' to a new iron pin and cap
S 76° 35'42" W – 18.11' to a new iron pin and cap
S 66° 12'35" W – 56.03' to a new iron pin and cap
S 37° 12'39" W – 64.04' to a new iron pin and cap
S 48° 10'28" W – 99.11' to a new iron pin and cap at the margin of Overbrook Road.
Thence following a curve with the margin of Overbrook Road, said curve having a radius of 100', Arc Length of 17.65', Chord Bearing N 69° 24'31" W – 17.63' to a point in the margin of Overbrook Road
Thence leaving said margin of road the following courses and distances
N 25° 14'57" W – 97.62' to a new iron pin and cap
N 25° 14'57" W – 25.83' to a new iron pin and cap
N 63° 31'56" E – 80.84' to a new iron pin and cap
N 63° 31'56" E – 143.57' to a new iron pin and cap
N 03° 45'31" E – 109.17' to a new iron pin and cap
N 56° 47'09" W – 107.98' to a new iron pin and cap
N 29° 07'58" E – 105.21' to the point and place of beginning, containing 1.75 Acres more or less

Conservation Easement Area "C"

Beginning at an new iron pin and cap, said pin and cap being located S 71°44'49" E – 523.78 feet from a work station control monument with NCGS NAD 83 co-ordinates N 849,626.62 E 1,864,965.29. Thence the following courses and distances:

S 66° 47'44" E – 69.62' to a new iron pin and cap
N 48° 16'24" E – 71.01' to a new iron pin and cap
S 75° 52'31" E - 79.96' to a new iron pin and cap
S 66° 22'39" E – 50.35' to a new iron pin and cap
S 01° 57'55" E – 113.50' to a new iron pin and cap
S 41° 59'56" W – 93.17' to a new iron pin and cap
S 73° 59'39" W – 71.37' to a new iron pin and cap
N 60° 24' 38" W – 163.58' to a new iron pin and cap
N 11° 26'51" E – 18.82' to a new iron pin and cap
N 11° 26'51" E – 125.49' to the point and place of beginning containing 1.10 Acres more or less.

Conservation Easement Area "D"

Beginning at an new iron pin and cap, said pin and cap being located S 79°41'42" E – 575.49 feet from a work station control monument with NCGS NAD 83 co-ordinates N 849,626.62 E 1,864,965.29. Thence the following courses and distances:

N 17° 28'54" W – 86.87' to a new iron pin and cap
N 17° 28'54" W – 85.00' to a new iron pin and cap
S 75° 42'34" E – 167.49' to a new iron pin and cap
S 29° 20'18" E – 53.94' to a new iron pin and cap
S 14° 51'07" E – 122.78' to a new iron pin and cap
N 75° 39'23" W – 174.00' to the point and place of beginning containing 0.59 Acres more or less

Conservation Easement Area "E"

Beginning at an new iron pin and cap, said pin and cap being located N 78°41'10" E – 552.19 feet from a work station control monument with NCGS NAD 83 co-ordinates N 849,626.62 E 1,864,965.29. Thence the following courses and distances:

N 00° 16'40" E – 42.66' to a new iron pin and cap
N 50° 22'34" E – 27.84' to a new iron pin and cap

N 69° 21'29" E - 58.74' to a new iron pin and cap
S 71° 40'25" E – 7.97' to a new iron pin and cap
N 66° 26'32" E - 8.90' to a new iron pin and cap
N 63° 50'04" E – 20.72' to a new iron pin and cap
S 71° 13'11" E – 27.32' to a new iron pin and cap
S 56° 14'03" E – 12.12' to a new iron pin and cap
N 88° 59'18" E – 41.52' to a new iron pin and cap
S 83° 12' 35" E – 86.33' to a new iron pin and cap
N 81° 39' 06" E – 66.07' to a new iron pin and cap
S 63° 06' 28" E – 67.20' to a new iron pin and cap
S 00° 33'50" W - 42.52' to a new iron pin and cap

S 34° 22'35" W - 46.94' to a new iron pin and cap
S 82° 55'27" W – 40.80' to a new iron pin and cap
S 87° 44'53" W -111.35 to a new iron pin and cap
S 87° 44'53" W – 110.00' to a new iron pin and cap
N 65° 56'46" W – 121.38' to the point and place of beginning containing 0.99 Acres more or less.

Conservation Easement Area "F"

Beginning at an new iron pin and cap, said pin and cap being located N 79°01'09" E – 993.81 feet from a work station control monument with NCGS NAD 83 co-ordinates N 849,626.62 E 1,864,965.29. Thence the following courses and distances:

N 81° 47'33" E – 59.40' to a new iron pin and cap
S 03° 56'33" E – 114.36' to a new iron pin and cap
S 85° 06'50" W – 66.40' to a new iron pin and cap
N 00° 15'25" W – 111.27' to the point and place of beginning containing 0.16 Acres more or less.

Conservation Easement Area "G"

Beginning at an new iron pin and cap, said pin and cap being located N 80°14'06" E – 1088.32 feet from work station control monument with NCGS NAD 83 co-ordinates N 849,626.62 E 1,864,965.29. Thence the following courses and distances:

S 67° 49'59" E – 40.92' to a new iron pin and cap
S 55° 02'48" E – 50.03' to a new iron pin and cap
S 64° 00'03" E – 161.92' to a new iron pin and cap
S 64° 00'03" E – 147.97 to a new iron pin and cap
S 64° 00'03" E – 13.95' to the center of an existing sanitary sewer man hole
S 49° 29'50" E – 12.51' to a new iron pin and cap
S 49° 29'50" E – 85.79' to a new iron pin and cap
S 49° 29'50" E – 98.30' to a new iron pin and cap
S 87° 11'56" W – 146.80' to a new iron pin and cap
N 52° 26'04" W – 108.08' to a new iron pin and cap
N 73° 53'26" W – 125.93' to a new iron pin and cap
N 48° 39'45" W – 62.89' to a new iron pin and cap
N 54° 46'29" W – 121.33' to a new iron pin and cap
N 10° 21'38" W – 110.37' to the point and place of beginning, containing 1.20 Acres more or less.

Conservation Easement Area "H"

Beginning at an new iron pin and cap, said pin and cap being located S 84°08'08" E – 1574.01 feet from work station control monument with NCGS NAD 83 co-ordinates N 849,626.62 E 1,864,965.29. Thence the following courses and distances:

S 35° 24' 57" E – 19.09' to a new iron pin and cap
S 19° 44'27" E – 63.18' to a new iron pin and cap
S 27° 49'21" E – 43.02' to a new iron pin and cap
S 05° 09'20" W – 37.15' to a new iron pin and cap
S 07° 49'35" W – 112.29' to a new iron pin and cap

S 65° 00'18" W – 112.80' to a new iron pin and cap
N 16° 28'32" W – 76.42' to a new iron pin and cap
N 21° 28'51" E – 110.38' to a new iron pin and cap
N 19° 41'52" W – 77.35' to a new iron pin and cap
N 36° 53'10"W – 70.79' to a new iron pin and cap
N 88° 17'06" E – 118.26' to the point and place of beginning, containing 0.73 Acres more or less.

Conservation Easement Areas A,B,C,D,E,F,G & H were surveyed by Landmark Surveying, Inc., Survey plat entitled "Final Plat Conservation Easement for the State of North Carolina, Ecosystem Enhancement Program, Little Alamance Creek at Burlington Park, SPO#001-AAAG, EEP #92372" Dated: 05/01/2008, final revision dated 07/18/2008. Said plat recorded in the Alamance County Register of Deeds, Plat Book 73 Page 122.

NORTH CAROLINA PROFESSIONAL SEAL L-3395 LAND SURVEYOR DOUGLAS R. YARBROUGH

Douglas R. Yarbrough, PLS, L-3395

2/12/09
Date

EXHIBIT B

December 9, 2008

Mr. Tony Laws
Director, Recreation & Parks Department
P.O. Box 1358
Burlington, NC 27216

Reference: **Stormwater Level Spreader BMPs and Invasive Vegetation Maintenance Letter of Understanding**
Little Alamance Creek (Burlington City Park) Stream Restoration

Dear Tony:

The NC Ecosystem Enhancement Program (NCEEP) and the City of Burlington have entered into an option (dated October 3, 2006) for a restoration project on Little Alamance Creek within City Park in Burlington, NC. The stream restoration design includes the construction of two (2) stormwater level spreader BMPs as shown in "**Exhibit A**" incorporated hereinto. The purpose of this letter of understanding is to clarify said responsibilities of the NCEEP and the City of Burlington related to the stormwater BMPs and to articulate responsibilities with respect to invasive vegetation control. Details for maintenance and repair responsibilities for the BMPs are contained in the attached *Stormwater Level Spreader Repair and Maintenance Plan* agreement , "**Exhibit B" and incorporated hereinto.**

The NCEEP will be responsible for the financial costs of design and construction associated with stormwater BMPs. The NCEEP will also be responsible for all costs associated with monitoring and maintaining the physical and biological aspects of the constructed stormwater BMPs during the initial one-year warranty period that begins upon acceptance of BMP construction by

NCEEP and the NC State Construction Office, with review by the City of Burlington. NCEEP will also provide the City with electronic copies of the construction As-Built plans and will coordinate with the City on any repairs, if needed, conducted during the warranty period.

The City of Burlington will assume maintenance and repair responsibility after the initial one-year warranty period and once both parties agree that the basic conditions of this letter have been met. The City will follow guidelines outlined in the City's most current version of the *Owner's Maintenance Guide for Level Spreaders BMPs Constructed in the City of Burlington* and also in the North Carolina Division of Water Quality (DWQ) *Stormwater Best Management Practices Manual (July 2007)* to monitor, maintain, and repair (as necessary) the stormwater BMPs to function properly as designed for a period of 30 years.

The City has agreed to offset costs incurred by EEP for the project design and conservation easement survey associated with the stream restoration project on Brown Branch (Willowbrook Park). Due to adverse public opinion of the stream project, the City has declined further interest in partnering with EEP on this project. The EEP incurred a total of $61,132.00 and in lieu of reimbursement of incurred costs to EEP, the City has cooperatively agreed to provide invasive vegetation maintenance in the 7.06 acre conservation easement on the Little Alamance Creek stream restoration project. Invasive vegetation maintenance will include manual removal of invasive species and herbicide application in accordance with NC pesticide applicator license. Details for invasive maintenance and herbicide application are contained in the attached "EXHIBIT C" labeled *Invasive Vegetation Maintenance and Herbicide Application* agreement and incorporated hereinto. Currently no invasive vegetation has been identified within the 7.06 acre conservation easement on Little Alamance Creek, however there is potential for future invasive vegetation presence after construction. The EEP will monitor the conservation easement for a minimum of five years post construction, and will identify any invasive vegetation that requires maintenance action. The City's commitment to provide invasive maintenance will be required until the EEP officially closes the project and receives compensatory mitigation credit from the US Army Corps of Engineers. Any subsequent invasive vegetation maintenance required after the project officially ends will remain the City's responsibility.

In summary, this letter establishes a clear understanding of financial and management responsibilities of NCEEP and the City of Burlington related to the stormwater BMPs component and invasive vegetation removal of the stream restoration project. Please sign and return the attached "Review of Letter of Understanding to EEP.

With Best Regards,

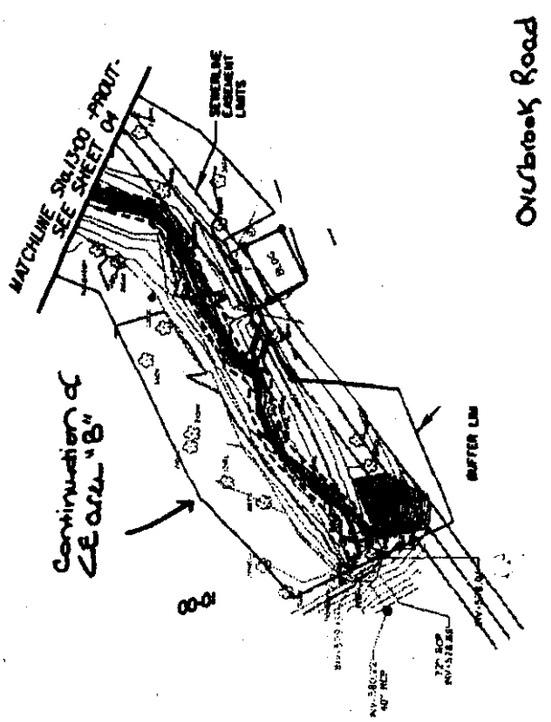
William Gilmore
Director

Cc: Kristie Corson - EEP Project Manager
Marion Patrick - State Property Office

Attachment-Exhibits A, B, and C

" EXHIBIT A" to EEP letter of understanding

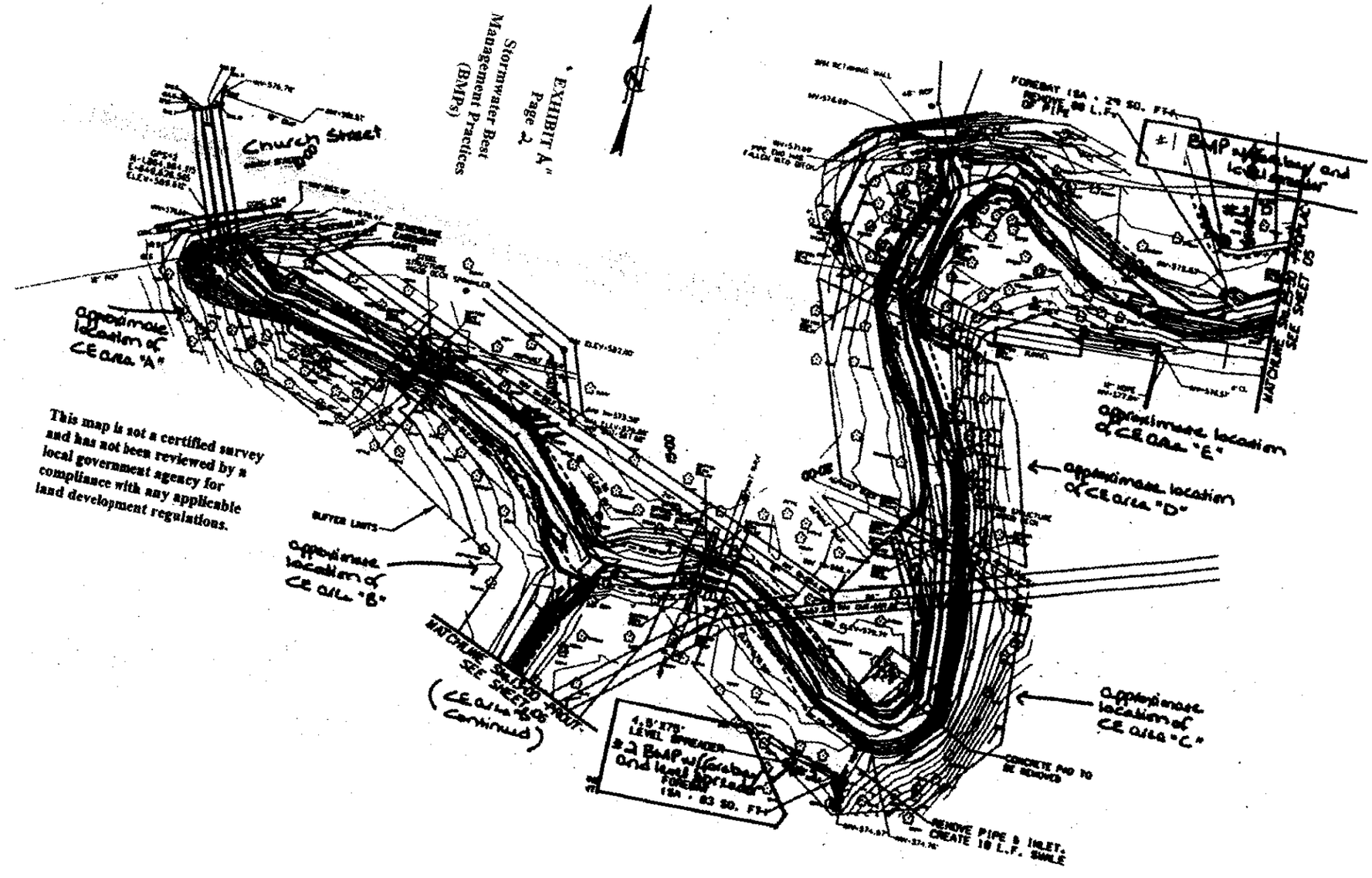
Stormwater Best Management Practices (BMPs)



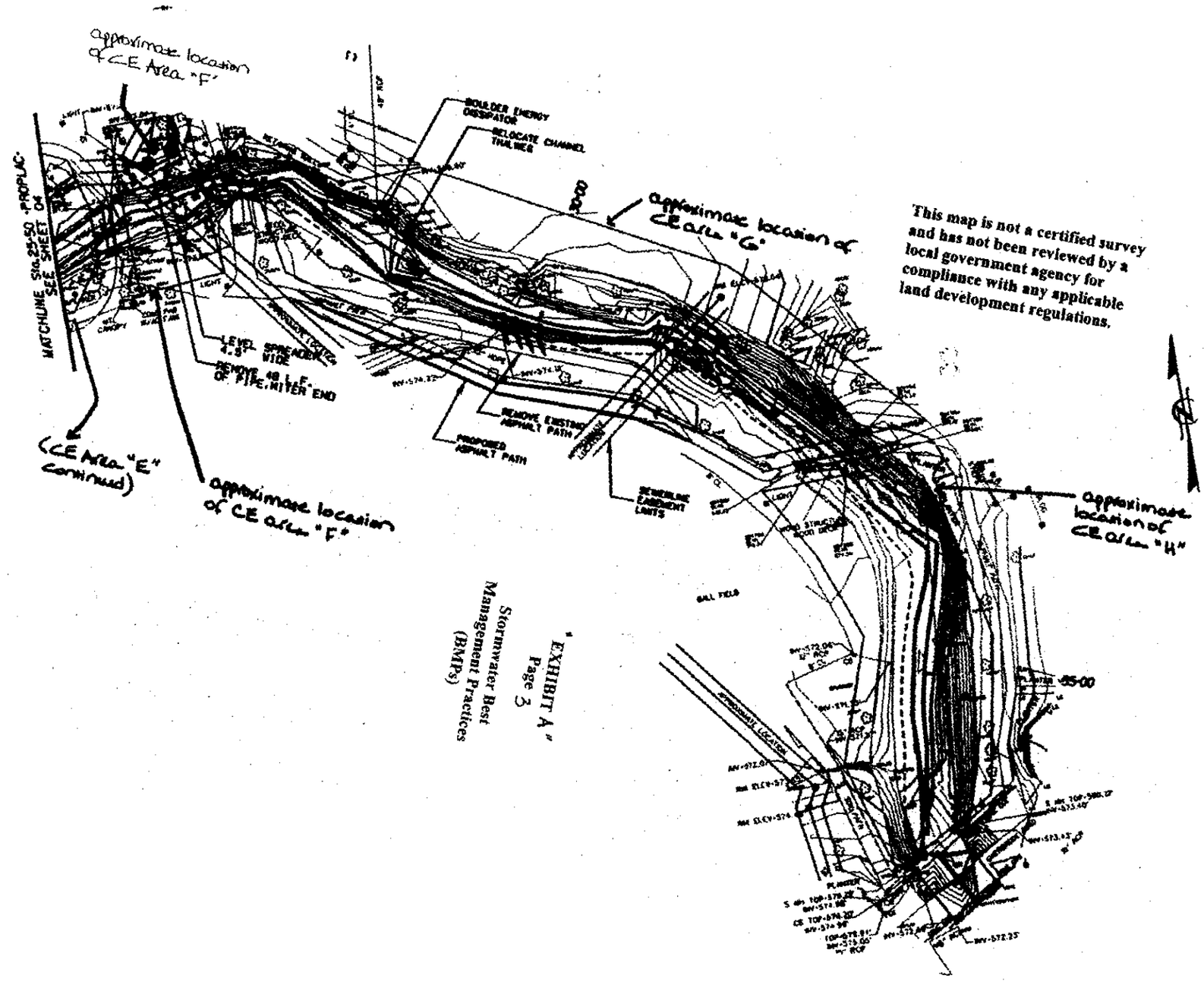
This map is not a certified survey and has not been reviewed by a local government agency for compliance with any applicable land development regulations.

"EXHIBIT A"
Page 2

Stormwater Best Management Practices (BMPs)



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.



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.

"EXHIBIT A"
Page 3

Stormwater Best Management Practices (BMPs)

"EXHIBIT B"
to
EEP Letter of Understanding

Little Alamance Creek
Stream Restoration Project
City Park

Stormwater Level Spreader Maintenance and Repair Plan

Introduction

The North Carolina Department of Environment and Natural Resources Ecosystem Enhancement Program (EEP) is conducting a stream restoration project on Little Alamance Creek within City Park in Burlington, NC. City Park is owned by the City of Burlington (City). As part of the restoration plan, EEP is also constructing two (2) stormwater level spreader BMPs (hereinafter "BMPs") within the park.

These stormwater level spreaders are shown on the **design** map labeled **Exhibit "A"** and are located within Conservation Areas C and E.

This document provides additional clarification and guidance to the City of Burlington for BMP maintenance and repair related to restrictions set forth in the Conservation Easement document (hereinafter "Easement") to be executed and recorded with Alamance County.

Purpose

The purpose of this Plan is to outline maintenance and repair responsibilities and requirements for the two (2) stormwater level spreader BMPs constructed by EEP as part of EEP's stream restoration project.

Stormwater Level Spreader BMP Responsibility

EEP will be responsible for BMP maintenance & repair on the stormwater level spreaders during the initial construction warranty period. The warranty period will last one year beginning upon completion and acceptance of the BMP structures by the State Construction Office. Prior to acceptance of the BMP structures by the State Construction Office, EEP and the City will jointly assess the stormwater level spreaders BMP's for compliance with the approved construction drawings and specifications.

Sixty days prior to the end of the warranty period, the City of Burlington and EEP will jointly assess the stormwater level spreader BMPs to ensure the

stormwater level spreader BMPs are functioning as designed. The City of Burlington shall provide written comments concerning the assessment of the stormwater level spreader BMPs within 10 business days of each joint assessment. EEP will provide the City of Burlington the as-built drawings prior to the initial joint assessment, as well as any revised as-built drawings, if applicable.

Once the City and EEP are in agreement that these conditions are met and the BMPs are free of existing maintenance needs, as outlined in Table 1.0 below, and are clear of any construction warranty work, EEP will transfer responsibility to the City in writing. The City will assume responsibility for maintenance and repair of the BMPs within the Easement at this time.

Stormwater Level spreader BMP Maintenance & Repair

The City will follow guidelines and requirements outlined in the City's most current version of the *Owner's Maintenance Guide for Stormwater BMPs Constructed in the City of Burlington* and also in the North Carolina Division of Water Quality (DWQ) *Stormwater Best Management Practices Manual (July 2007)* to monitor, maintain, and repair (as necessary) the stormwater BMPs to function properly as designed.

Specifically, maintenance and repair activities shall be performed as necessary as follows. Any problems that are found shall be repaired as soon as possible.

Common Maintenance Issues

During the first one or two years after construction, filter strips and level spreaders should be inspected for proper distribution of flows and signs of erosion during and after major storm events. After the first one or two years, the strip may be inspected annually or biannually. If evidence of erosion exists, the eroded areas should be filled in and reseeded. The cause of the erosion should then be determined and, if possible, eliminated.

Filter strips that are not maintained properly may quickly become nonfunctional. Maintenance involves routine activities such as mowing, trimming, and replanting when necessary. Strips that receive excessive sediment may require periodic regrading and reseeding of their upslope edge because deposited sediment can kill grass and change the elevation of the edge such that the stormwater no longer flows through the strip in thin sheets. Maintenance requirements are as follows:

Sample Inspection and Maintenance Provisions

Important maintenance procedures:

-

Immediately after the filter strip is established, any newly planted vegetation will be watered twice weekly if needed until the plants become established (commonly six weeks).

-

Once a year, the filter strip will be reseeded to maintain a dense growth of vegetation

-

Stable groundcover will be maintained in the drainage area to reduce the sediment load to the vegetation.

-

Two to three times a year, grass filter strips will be mowed and the clippings harvested to promote the growth of thick vegetation with optimum pollutant removal efficiency. Turf grass should not be cut shorter than 3 to 5 inches and may be allowed to grow as tall as 12 inches depending on aesthetic requirements (NIPC, 1993). Forested filter strips do not require this type of maintenance.

-

Once a year, the soil will be aerated if necessary.

-

Once a year, soil pH will be tested and lime will be added if necessary.

After the filter strip is established, it will be inspected quarterly and within 24 hours after every storm event greater than 1.0 inch (or 1.5 inches if in a Coastal County). Records of inspection and maintenance will be kept in a known set location and will be available upon request.
Inspection activities shall be performed as follows. Any problems that are found shall be repaired immediately.

Table 1.0

Maintenance for Level Spreaders and Filter Strips

BMP element:	**Potential problem:**	**How to remediate the problem:**
The entire filter strip system	Trash/debris is present.	Remove the trash/debris.
The flow splitter device (if applicable)	The flow splitter device is clogged.	Unclog the conveyance and dispose of any sediment off-site.
	The flow splitter device is damaged.	Make any necessary repairs or replace if damage is too large for repair.
The swale and the level lip	The swale is clogged with sediment.	Remove the sediment and dispose of it off-site.
	The level lip is cracked, settled, undercut, eroded or otherwise damaged.	Repair or replace lip.
	There is erosion around the end of the level spreader that shows stormwater has bypassed it.	Regrade the soil to create a berm that is higher than the level lip, and then plant a ground cover and water until it is established. Provide lime and a one-time fertilizer application.
The filter strip	Grass is too short or too long (if applicable).	Maintain grass at a height of approximately three to six inches.
	Areas of bare soil and/or erosive gullies have formed.	Regrade the soil if necessary to remove the gully, and then plant a ground cover and water until it is established. Provide lime and a one-time fertilizer application.
	Sediment is building up on the filter strip.	Remove the sediment and restabilize the soil with vegetation if necessary.

		Provide lime and a one-time fertilizer application.
	Plants are desiccated.	Provide additional irrigation and fertilizer as needed.
	Plants are dead, diseased or dying.	Determine the source of the problem: soils, hydrology, disease, etc. Remedy the problem and replace plants. Provide a one-time fertilizer application.
	Nuisance vegetation is choking out desirable species.	Remove vegetation by hand if possible. If pesticide is used, do not allow it to get into the receiving water.
The receiving water	Erosion or other signs of damage have occurred at the outlet.	Contact the NC Division of Water Quality local Regional Office, or the 401 Oversight Unit at 919-733-1786.

"EXHIBIT C"
to
EEP Letter of Understanding

Little Alamance Creek
Stream Restoration Project
City Park

Invasive Vegetation Maintenance and Herbicide Application Plan

Introduction

The North Carolina Department of Environment and Natural Resources Ecosystem Enhancement Program (EEP) is conducting a stream restoration project on Little Alamance Creek within City Park in Burlington, NC. City Park is owned by the City of Burlington (City). As part of the project partnership, the City of Burlington has agreed to provide invasive vegetation maintenance and herbicide application as deemed necessary by the EEP to the +/-7.06 acre conservation easement. The benefits of managing exotic invasive vegetation and providing herbaceous weed control restores the functionality of the riparian buffer.

This document provides additional clarification and guidance to the City of Burlington for invasive vegetation maintenance and herbicide application set forth in the Conservation Easement document (hereinafter "Easement") to be executed in the Conservation Easement survey plat (hereinafter "Survey") , both to be recorded with Alamance County.

Purpose

The purpose of this Plan is to outline invasive vegetation maintenance and herbicide application responsibilities and requirements for +/- 7.06 acre conservation easement constructed by EEP as part of EEP's stream restoration project.

Invasive Vegetation Maintenance and Herbicide Application Responsibility

EEP will be responsible for identifying any invasive vegetation that may appear within the +/- 7.06 acre conservation easement during the monitoring period. The monitoring period is expected to occur for a minimum of five years after construction. The EEP will coordinate with the City on the type of invasive vegetation and appropriate methods for removal. The City will remove said vegetation within an appropriate time period per EEP's notification and per the vegetation removal strategy.

The City will furnish all labor, materials, and equipment, and perform all work necessary and incidental to the removal of invasive vegetation and herbicide application of invasive vegetation within the +/- 7.06 acre conservation easement along Little Alamance Creek.

The City must at all times utilize a NC pesticide applicator registered and licensed in at least one of the following licensing categories: A (Aquatic Pest Control), G (Forest Pest Control), H (Right-of-Way Pest Control), or N (Demonstration and Research). Due to the sensitive nature of using chemicals near water bodies, as well as the sensitive nature of many of the citizens in urban parks with regard to the application of chemicals, City employees shall be trained in accordance with any local, state, and federal regulations or laws prior to any application of chemicals during the term of this contract

If utilizing the manual method of removal, ensure that the entire plant with roots are removed. Also, avoid pulling native grasses that often grow intermingled with invasive vegetation. Plants already in the fruiting stage should be bagged and disposed of offsite to prevent dispersal of seed. The City shall be responsible for offsite disposal of all brush in a lawful manner.

The City will not remove, injure or damage native trees, shrubs, or other types of vegetation that are to remain growing, and shall also prevent damage to the adjacent property. Damage to any native plants should be minimized to the maximum practical extent with particular attention being paid to the species installed by NCEEP outlined in List 1.

Materials and Methods

The City will utilize professional grade sprayers to selectively apply herbicide in accordance with the manufacturer's specifications and recommendations and these Technical Specifications. The City will conduct operations as to prevent injury to native trees, shrubs, or other types of vegetation that are to remain growing, and also to prevent damage to adjacent property.

Herbicide treatments should be made immediately following removal of invasive vegetation. The systematic herbicide to be utilized must be approved by the EEP. The choice of chemical should be based on the application method and particular plant species being treated. Treatment shall be in accordance with the NC Pesticide License requirements and the herbicide product label instructions. Be careful to avoid application to non-target plants. A water-soluble dye shall be added to all herbicide treatments to track treatment and detect spray drift on desirable plants. Herbicide products to be used shall be approved for use in aquatic environments. Wind precautions are to be observed to prevent non-target herbicide drift. Herbicide shall not be applied at anytime the wind speed exceeds five (5) mph. The treatment process shall not commence

unless it is reasonable to expect the herbicide can be applied 2 or more hours before the next rainfall.

If utilizing the cut-stump method or the foliar spray method: Apply herbicide in accordance with the manufacturer's recommendations. Do not apply to the point of runoff. Ambient air temperature should be above 65°F to ensure translocation of the herbicide to the roots. Once the stems have been cut, the stumps should be painted with herbicide, even if rain seems eminent. Any other methods must be approved by NC EEP.

If invasive vegetation is identified onsite other than those identified by the EEP, the City shall proceed with treatment. Immediate notice shall be made to NC EEP with information regarding the species and extent of coverage.

List 1. List of planted native plants not to be damaged or removed

Scientific Name	Common Name
Aesculus sylvatica	Buckeye
Alnus serrulata	Hazel Alder
Asclepias incarnata	Swamp milkweed
Asclepias tuberosa	Butterfly weed
Asimina triloba	Paw paw
Betula nigra	River Birch
Carpinus caroliniana	Ironwood
Carya cordiformis	Bitterwood
Carya ovata	Shagbark hickory
Celtis laevigata	Hackberry
Chasmanthium latifolium	River oats
Cornus amomum	Silky dogwood
Corylus cornuta	Beaked hazel-nut
Cephalanthus occidentalis	Buttonbush
Cornus amomum	Silky Dogwood
Cornus florida	Flowering dogwood
Euonymus americana	Strawberry bush
Fraxinus pennsylvanica	Green Ash
Hystrix patula	Bottlebrush grass
Ilex opaca	American Holly
Juglans nigra	Black walnut
Impatiens capensis	Jewelweed
LIndera benzoin	Spicebush
Leucothoe recurva	Fetter-bush
Lobelia cardinalis	Cardinal flower
Panicum clandestinum	Deer tongue
Panicum virgatum	Switchgrass
Platanus occidentalis	American Sycamore
Quercus michauxii	Swamp chestnut oak
Quercus pagoda	Cherrybark oak
Salix nigra	Black Willow
Sambucus canadensis	American Black Elderberry
Solidago caesia	Goldenrod
Symphoricarpos orbiculatus	Coralberry

Review of Letter of Understanding
Stormwater Level Spreader BMPs and Invasive Vegetation Maintenance
and
Conservation Easement
Little Alamance Creek (Burlington City Park) Stream Restoration

Project Tracking System # 92372
SPO File #: 001-AAAG

County: Alamance

Property: Conservation Easement (+/-7.06 acres)
Tract PIN# 8864790671

Project: Little Alamance Creek (Burlington City Park) Stream Restoration Project

Owner(s): City of Burlington

Property owner(s) complete the section below.
Please return this form in the enclosed envelope.

I have reviewed the letter of understanding and conservation easement document.

✓ I am in agreement with the letter of understanding; and conservation easement template for future access in reference to the above mentioned property.

_____ I have reviewed the letter of intent and conservation easement and have the following concerns:

_____
_____
_____
_____
_____
_____

Signed: [signature] Date: 2-3-09
Title: Mayor

Signed: _____ Date: _____
Title: _____