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FOR MULTIPLE PIN SHEET
SEE BOOK 3679 PAGE 281

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AB

FILED Joyce H. Pearson
Register of Deeds Orange COUNTY, NC
BY: Delwah B. Brock Asst.
Deputy

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

ORANGE COUNTY
SPO File Number 68-AAB
Prepared by: Office of the Attorney General
Property Control Section
Return to: Blane Rice, State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT DEED, made this 21st day of February, 2005, by between Efland, LLC consisting of Louis C. Smith and wife, Martha M. Smith, 63% individual interest, and Efland LLC, 37% undivided interest consisting of Timothy A. Holleman, Member/Manager, J. David Morris, Member/Manager and S. Craig Morrison, Member/Manager, ("**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

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 **Cheeks Township, Orange County**, North Carolina (the "**Protected Property**"), and being more particularly described as being **lots 1-17** as shown at **Plat Book 91 page 137** as recorded in **Deed Book 2851 at Page 508 of the Orange County Registry; and**

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Protected Property, thereby restricting and limiting the use of the included areas 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 McGowan **Creek**.

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 Protected Property, referred to hereafter as the "**Easement Area**", for the benefit of the people of North Carolina. Easement Area being all of those tracts of land identified as **"Wetlands Mitigation Areas" totaling 22.50 acres** and **"Wetlands Purchase Areas" totaling 8.30 acres** as shown on a plat of survey entitled "**Wetland Areas and Stream Centerlines Surveyed for the State of North Carolina at McGowan Creek Subdivision" dated December 10, 2004, certified by William H. McCarthy, Jr. North Carolina P.L.S. Number L-3248 and also being recorded in Plat Book** 96 97, **Page** 200 1-3, **of the Orange County Registry.**

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 hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited.

B. Educational Uses. The Grantor reserves the right to 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 diseased or damaged trees and vegetation that obstructs, destabilizes or renders unsafe the Easement Area, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited.

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, walkways, or asphalt or concrete paving in the Easement Area. Foot trails with a pervious surface may be constructed and maintained running parallel and at least 30 feet from the stream. These foot trails shall not exceed five feet in width and must not require the felling or removal of any trees larger than 6 inches in diameter.

H. Signs. No signs shall be permitted in the Easement Area except 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. Said signs shall not exceed six inches in diameter.

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 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 in the conservation easement area. In the event of an emergency interruption or shortage of 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.** 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. Any future division of the remaining fee simple rights shall be subject to this Conservation Easement

M. **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.

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.** The Grantor reserves the right to a 50' (fifty feet) wide access area for septic construction and maintenance as shown on **Sheet 3, Detail "A" on the plat of survey entitled "Wetland Areas and Stream Centerlines Surveyed for the State of North Carolina at McGowan Creek Subdivision" dated December 10, 2004, certified by William H. McCarthy, Jr. North Carolina P.L.S. Number L-3248.** Through, over, under and across the Septic Construction and Maintenance Area, Sheet 3, Detail "A", the following conditions shall apply:

1) Any disturbed facilities, features and vegetation will be restored to their original condition to the greatest extent reasonably practicable.
2) Corridor clearing width for construction will be limited to the minimum necessary to construct or maintain the needed facilities, subject to line size, equipment size and

work zone. The impacted area will be re-vegetated with native herbaceous species at the completion of disturbance.

3) Vegetative clearing and general construction disturbance will be minimized to the greatest extent reasonably practicable.
4) Crossings will be perpendicular to the greatest extent reasonably practicable.
5) Erosion control devices shall be utilized to contain all disturbed materials and will conform to State requirements. Crossing of the stream, waterway, wetland or other water feature will be accomplished in a timely manner such that environmental and flooding impact is minimized to the greatest extent reasonably practicable.
6) Depth of underground construction shall be to a sufficient depth to avoid future exposure due to scouring to the greatest extent reasonably practicable.

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. Unless otherwise specifically set forth in this Conservation Easement, the 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.

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, 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, their successors or assigns, 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, their successors' or assigns', control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken in good faith by the Grantor, their successor or assigns, 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, Grantor's their successors or assigns including, without limitation, any costs of restoration necessitated by Grantor's, their successor or assigns, 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, their successor or assigns, 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, their successor or assigns, 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, their successor or assigns, 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.

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

Grantor

By: _____

Louis C. Smith, Individual

Grantor

By: _____

Martha M. Smith, Individual

For Efland LLC

Grantor

By: _____

Timothy A. Holleman, Member/Manager, Efland LLC

Grantor

By: _____

J. David Morris, Member/Manager, Efland LLC

Grantor

By: _____

S. Craig Morrison, Member/Manger, Efland LLC

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NORTH CAROLINA

COUNTY OF WAKE

I, Robin O. Jenks, a Notary Public in and for the County and State aforesaid, do hereby certify that Louis C. & Martha M. Smith, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 21 day of FEBRUARY, 2005.

Robin O. Jenks
Notary Public

ROBIN O. JENKS NOTARY *** PUBLIC WAKE COUNTY, N.C.

My commission expires:

June 13th, 2005

NORTH CAROLINA

COUNTY OF Durham

I, Connie L. Faison, a Notary Public in and for the County and State aforesaid, do hereby certify that Timothy A. Holleman MEMBER/MANAGER EFLAND, LLC, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument ON BEHALF OF EFLAND, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 22nd day of February, 2005.

Connie L. Faison
Notary Public

CONNIE L. FAISON NOTARY PUBLIC DURHAM COUNTY, N.C.

My commission expires:

11-23-2008

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NORTH CAROLINA

COUNTY OF Durham

I, Connie L. Faison, a Notary Public in and for the County and State aforesaid, do hereby certify that J. David Morris MEMBER/MANAGER EFLAND, LLC, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument ON BEHALF OF EFLAND, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 22nd day of February, 2005.

Connie L. Faison
Notary Public

My commission expires:
11-23-2008
11-23-2008

CONNIE L. FAISON NOTARY PUBLIC DURHAM COUNTY

NORTH CAROLINA

COUNTY OF Durham

I, Connie L. Faison, a Notary Public in and for the County and State aforesaid, do hereby certify that S. Craig Morrison MEMBER/MANAGER EFLAND, LLC, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument ON BEHALF OF EFLAND, LLC.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the 22nd day of February, 2005.

Connie L. Faison
Notary Public

My commission expires:
11-23-2008
11-23-2008

CONNIE L. FAISON NOTARY PUBLIC DURHAM COUNTY

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Joyce H. Pearson
Register of Deeds
Orange County
North Carolina

State of North Carolina, County of Orange

The foregoing certificate(s) of CONNIE L FAISON, NOTARY PUBLIC, ROBIN O JENKS, NOTARY PUBLIC for the Designated Governmental units is/are certified to be correct. See filing certificate herein.

This day February 22, 2005.

Joyce H. Pearson, Register of Deeds

BY: _____
~~Deputy~~ / Assistant Register of Deeds

Yellow probate sheet is a vital part of your recorded document. Please retain with original document and submit for recording.

NORTH CAROLINA

COUNTY OF _____

I, _____, a Notary Public in and for the County and State aforesaid, do hereby certify that _____, Grantor, personally appeared before me this day and acknowledged the execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and Notary Seal this the _____ day of _____, 2005.

_____
Notary Public

My commission expires:

_____