Image ID: 000001843586 Type: CRP
Recorded: 07/28/2010 at 11:41:06 AM
Fee Amt: $82.00 Page 1 of 22
Revenue Tax: $0.00
Workflow# 0000030269-0001
Craven, NC
Sherri B. Richard Register of Deeds
BK 2929 PG 728

STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

Davis Hartman Wright

Conservation Easement for Stormwater Best Management Practice (BMP)

SPO File Number 25-Y
EEP # 92646

Prepared by: Office of the Attorney General
Property Control Section
Return to: NC Department of Administration
State Property Office
1321 Mail Service Center
Raleigh, NC 27699-1321

THIS CONSERVATION EASEMENT DEED is made pursuant to the provisions of N.C. General Statutes Chapter 121, Article 4, this 23rd day of March, 2010, by the City of New Bern, a municipal corporation, ("**Grantor**"), whose mailing address is P.O. Box 1129, New Bern, NC, 28563, 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 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, Grantor owns in fee simple certain real property situated, lying, and being in the City or New Bern, Craven County, North Carolina and being more particularly described in the deeds recorded in Deed Book 2706, Page 914 and Deed Book 1685, Page 254, Craven County Registry (the **"Parent Tract"**). The property is also identified as being Tax Parcel Number 8-240-62 of the Craven County Tax Office containing 51.978 +/- acres and is located along the eastern side of Simmons Street extension north of the Atlantic and North Carolina Railroad.

WHEREAS, Grantor is willing to grant a Conservation Easement over the herein described areas of the Parent Tract, thereby restricting and limiting the use of the included areas of the Parent Tract 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 Jack Smith Creek, the Neuse River, and their 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, for the time period as designated below and in **Item I - Duration of Easement** herein, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over described portions of the Property, referred to hereafter as the "**Easement Area**", for the benefit of the people of North Carolina, such property being all of the tracts of land as identified as **Areas 3, 4, and 5** as shown on a plat of survey entitled "Conservation Easement Survey for the State of North Carolina, Ecosystem Enhancement Program, and Simmons Street Storm Water Wetland at Jack Smith Creek, SPO 25-Y EEP 92646" and **recorded in Map Book** H, **Page** 175F thru 175H, **Craven** County Registry. The tracts being more particularly described as follows:

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EASEMENT AREAS:

Area 3 – containing 25.67 +/- Acres or 1,118,029 +/- Square Feet *("Exhibit A" attached hereto)*

(Area 3 is designated as a Storm Water Wetland Best Management Practice (BMP) which is conveyed for a period of 35 years)

Area 4- containing 2.91 +/- Acres or 126,765 +/- Square Feet *("Exhibit B" attached hereto)*

Area 5 – containing 13.11 +/- Acres or 571,194 +/- Square Feet *("Exhibit C" attached hereto)*

(Areas 4 and 5 are designated as a permanent Conservation Easement to be held in perpetuity)

Excepted from this conveyance is the following described property as shown on the above referenced plat:

All of Area 2- containing 11.01 Acres or 479,463 Square Feet which is retained by the Grantor, the City of New Bern, which is subject to two access easements as shown on a plat of survey entitled "Conservation Easement Survey for the State of North Carolina, Ecosystem Enhancement Program, and Simmons Street Storm Water Wetland at Jack Smith Creek, SPO 25-Y EEP 92646" and recorded in Plat Book H at Page 175F thru 175H Craven County Registry .

Portion of Area 4- width of the existing drainage ditch running through Area 4

Permanent access to Areas 3, 4, and 5 shall be across the two access easements shown on the plat of survey entitled "Conservation Easement Survey for the State of North Carolina, Ecosystem Enhancement Program, and Simmons Street Storm Water Wetland at Jack Smith Creek, SPO 25-Y EEP 92646" and recorded in Plat Book H at Page 175F thru 175H Craven 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:

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DURATION OF EASEMENT

Pursuant to law, including the above referenced statutes, the Easement Area for the Stormwater Best Management Practice (BMP Easement) shown as **Area 3** and containing 25.67 +/- Acres on above referenced plat shall be for a period of **35 years** commencing on the date of execution of this easement deed. The Conservation Easement shown as **Area 4** (containing 2.91 +/- acres) and **Area 5** (containing 13.11 +/- acres) on above referenced survey shall be **perpetual** and they shall run with, and be a continuing restriction upon the use of, the Property, and they shall be enforceable by the Grantee against the Grantor and against Grantor's successors and assigns, representatives, agents, lessees, and licensees. The BMP Easement and Conservation Easement areas as shown in **Exhibits "A," "B,"** and **"C"** are collectively referred to as the "Easement Area."

II. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The Easement Areas 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 expressly agrees to maintain and repair, as well as to bear the sole financial responsibility for **the stormwater wetland described in the *Simmons Street Stormwater Wetland - Letter of Understanding and the Simmons Street Stormwater Wetland Maintenance and Repair Plan,* attached hereto as "Exhibit D" and incorporated herein by reference.**

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 to persons or natural habitat, all cutting, removal, mowing, harming, or destruction of any trees and vegetation in the Easement Area is prohibited, except as necessary to

control invasive and/or exotic species and as described in the attached **"Exhibit E,"** or except as necessary to provide for the other expressly allowed uses in the BMP Conservation Easement. All vegetative cutting shall be done in a manner that maintains the integrity of the Easement.

Illustrations in "Exhibit E" refer to the vegetation management zones for Easement Areas described below.

Embankments/Berms. Managed grass zone: Plants shall be maintained at a height of no less than 6 inches.

Shallow Land and Water Areas. No cutting other than invasive exotic plant management.

Wetland Restoration and Enhancement Areas. No cutting other than invasive exotic plant management.

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. ***The Grantor reserves the right to build a greenway trail, within the Easement Area, but outside the permanent Conservation Easement area, the location of which must be approved in advance by the Grantee. The trail must be situated in a location where no vegetative cutting will be needed that is inconsistent with the restrictions in this conservation easement.***

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.

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.

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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 unless specifically required for stormwater BMP wetland maintenance as described for restoration activities elsewhere in this document.

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 except as provided by the pump stations that are designed and approved to supply stormwater runoff to the BMP Easement area. No altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns is 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 two access easements shown on the plat of survey entitled "Conservation Easement Survey for the State of North Carolina, Ecosystem Enhancement Program, and Simmons Street Storm Water Wetland at Jack Smith Creek, SPO 25-Y EEP 92646" and recorded in Plat Book H at Page 175F thru 175H Craven County Registry .

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 by Grantor is prohibited.

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 N.C. Ecosystem Enhancement Program, whose mailing address is 1652 Mail Services Center, Raleigh, NC 27699-1652.

III. GRANTEE RESERVED USES

A. Ingress, Egress, and Inspection. The Grantee, its employees and agents, successors and assigns, shall have the perpetual right of unlimited and repeated ingress and

egress to the Easement Area over easement areas 4 and 5, easement area 3 for the duration of the easement, and the two access easements as shown on a plat of survey entitled "Conservation Easement Survey for the State of North Carolina, Ecosystem Enhancement Program, and Simmons Street Storm Water Wetland at Jack Smith Creek, SPO 25-Y EEP 92646" and recorded in Plat Book H at Page 175 F - 175 H Craven County Registry 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: (1) planting of trees, shrubs and herbaceous vegetation; (2) installation of monitoring wells; (3) utilization of heavy equipment to grade, fill, and prepare the soil; (4) modification of the hydrology of the site; and (4) installation of natural and manmade materials as needed to direct in-stream, above ground, and subterraneous water flow.

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, which 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.

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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, its 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, 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.

V. 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.

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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.

VI. 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 NEW BERN

By: _____
Lee Wilson Bettis, Jr., Mayor

(Corporate Seal)

ATTESTED BY:

Veronica E. Mattocks

Veronica E. Mattocks, City Clerk

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STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

I, Pamela S. Belrose, a notary public in and for said county and state, do hereby certify that on the 23 day of March, 2010, before me personally appeared LEE WILSON BETTIS, JR., with whom I am personally acquainted, who, being by me duly sworn, says that he is the Mayor and that VERONICA E. MATTOCKS is the City Clerk of the City of New Bern, the municipal corporation described in and which executed the foregoing instrument; that he knows the common seal of said municipal corporation; that the seal affixed to the foregoing instrument is said common seal; that the name of the municipal corporation was subscribed thereto by the said Mayor; that the said common seal was affixed, all by order of the Board of Aldermen of said municipal corporation; and that the said instrument is the act and deed of said municipal corporation.

WITNESS my hand and notarial seal, this 23 day of March, 2010.

Pamela S. Belrose
Notary Public

PAMELA S. BELROSE NOTARY PUBLIC CRAVEN COUNTY, N.C.

My commission expires:

9-10-11

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EXHIBIT A

PROPERTY DESCRIPTION AREA 3
FOR
CONSERVATION EASEMENT SURVEY FOR THE STATE OF NORTH CAROLINA, ECOSYSTEM ENHANCEMENT PROGRAM, AND SIMMONS STREET STORM WATER WETLAND AT JACK SMITH CREEK
SPO 25-Y EEP 92646
ACROSS THE PROPERTY OF CITY OF NEW BERN
APRIL 05, 2010

That certain parcel or parcels of land, said parcel being a portion of the property described in a deed recorded in Deed Book 2706 Page 914 as recorded in the Craven County Register of Deeds office and being more fully described as follows;

Beginning at a point, said point being the following bearings and distances from NCGS Monument Pembroke, South 73°52'48" East a distance of 90.56 feet, North 33°48'39" East a distance of 59.06 feet and North 21°39'05" West a distance of 8133.30 feet from said monument, said monument having NC Grid Nad 83(2007) coordinates of North 497,646.43 feet and East 2,580,797.84 feet, said monument also being South 80°37'41' West a distance of 4826.06 feet from NCGS monument E146 AZ MK with NC Grid Nad 83(2007) coordinates of North 498,432.22 feet and East 2,585,559.03 feet, said point being the true **Point of Beginning;**

Thence from the **Point of Beginning;** the following bearings and distances North 59°45'16" East, a distance of 56.20 feet, North 86°11'16" East, a distance of 56.37 feet, North 22°04'32" East, a distance of 149.66 feet, North 44°21'07" East, a distance of 461.30 feet, South 48°49'32" East, a distance of 39.85 feet, North 52°03'45" East, a distance of 518.24 feet, North 68°02'41" East, a distance of 110.41 feet, North 48°53'27" East, a distance of 188.58 feet, North 58°15'30" East, a distance of 398.68 feet, North 64°32'24" East, a distance of 391.96 feet, South 74°03'38" East, a distance of 141.38 feet to a point on the common property line between the City of New Bern and J. Alfred Mayo Jr.; thence with said line South 17°51'17" West, a distance of 27.16 feet to an iron rod; continuing with said line South 17°22'05" West, a distance of 1008.02 feet to an iron rod; thence

South 17°33'05" West, a distance of 110.22 feet to an iron rod; thence leaving said line the following bearings and distances North 51°56'50" West, a distance of 349.37 feet, North 76°56'09" West, a distance of 44.85 feet, thence South 60°56'18" West, a distance of 364.23 feet, South 12°37'49" West, a distance of 69.28 feet, South 14°18'06" East, a distance of 62.41 feet, thence South 30°33'29" East, a distance of 128.97 feet, South 15°44'23" West, a distance of 103.14 feet, South 38°03'35" West, a distance of 120.83 feet, thence South 73°41'32" West, a distance of 71.23 feet, thence North 67°10'51" West, a distance of 43.86 feet, North 31°58'19" West, a distance of 198.40 feet, North 00°32'01" East, a distance of 320.72 feet, North 10°17'46" East, a distance of 186.84 feet, South 88°17'26" West, a distance of 130.95 feet, South 58°49'26" West, a distance of 166.54 feet, thence South 13°44'54" West, a distance of 157.05 feet, South 39°35'13" East, a distance of 93.88 feet, South 27°47'57" East, a distance of 313.57 feet, South 09°27'59" West, a distance of 45.60 feet, South 80°32'28" West, a distance of 114.54 feet, and North 73°52'48" West, a distance of 600.37 feet to the **Point of Beginning**. Containing 1,118,029 Sq. Ft. or 25.67 ACRES more or less all as shown on a map prepared by Mckim and Creed titles "Conservation Easement Survey for the State of North Carolina, Ecosystem Enhancement Program, and Simmons Street Storm Water Wetland at Jack Smith Creek, SPO 25-Y EEP 92646" Dated June 5, 2009.

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EXHIBIT B

PROPERTY DESCRIPTION AREA 4
FOR
CONSERVATION EASEMENT SURVEY FOR THE STATE OF NORTH CAROLINA, ECOSYSTEM ENHANCEMENT PROGRAM, AND SIMMONS STREET STORM WATER WETLAND AT JACK SMITH CREEK
SPO 25-Y EEP 92646
ACROSS THE PROPERTY OF CITY OF NEW BERN
APRIL 05, 2010

That certain parcel or parcels of land, said parcel being a portion of the property described in a deed recorded in Deed Book 2706 Page 914 as recorded in the Craven County Register of Deeds office and being more fully described as follows;

Beginning at a point, said point being the following bearings and distances from NCGS Monument Pembroke, North 80°32'28" East a distance of 114.54 feet, South 73°52'48" East a distance of 600.37 feet, South 73°52'48" East a distance of 90.56 feet, North 33°48'39" East a distance of 59.06 feet and North 21°39'05" West a distance of 8133.30 feet from said monument, said monument having NC Grid Nad 83(2007) coordinates of North 497,646.43 feet and East 2,580,797.84 feet, said monument also being South 80°37'41' West a distance of 4826.06 feet from NCGS monument E146 AZ MK with NC Grid Nad 83(2007) coordinates of North 498,432.22 feet and East 2,585,559.03 feet, said point being the true **Point of Beginning;**

Thence from the **Point of Beginning;** the following bearings and distances North 09°27'59" East, a distance of 45.60 feet, North 27°47'57" West, a distance of 313.57 feet, North 39°35'13" West, a distance of 93.88 feet, North 13°44'54" East, a distance of 157.05 feet, North 58°49'26" East, a distance of 166.54 feet, North 88°17'26" East, a distance of 130.95 feet, South 10°17'46" West, a distance of 186.84 feet, South 00°32'01" West, a distance of 320.72 feet, South 31°58'19" East, a distance of 198.40 feet, North 84°48'26" West, a distance of 85.09 feet, North 73°52'48" West, a

distance of 100.00 feet to the **Point of Beginning**. Containing 126,765 Sq. Ft. or 2.910 ACRES, more or less all as shown on a map prepared by Mckim and Creed titles "Conservation Easement Survey for the State of North Carolina, Ecosystem Enhancement Program, and Simmons Street Storm Water Wetland at Jack Smith Creek, SPO 25-Y EEP 92646" Dated June 5, 2009.

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EXHIBIT C

PROPERTY DESCRIPTION AREA 5
FOR
CONSERVATION EASEMENT SURVEY FOR THE STATE OF NORTH CAROLINA, ECOSYSTEM ENHANCEMENT PROGRAM, AND SIMMONS STREET STORM WATER WETLAND AT JACK SMITH CREEK
SPO 25-Y EEP 92646
ACROSS THE PROPERTY OF CITY OF NEW BERN
APRIL 05, 2010

That certain parcel or parcels of land, said parcel being a portion of the property described in a deed recorded in Deed Book 2706 Page 914 as recorded in the Craven County Register of Deeds office and being more fully described as follows;

Beginning at a point, said point being the following bearings and distances from NCGS Monument Pembroke, North 73°41'32" East a distance of 71.23 feet, North 67°10'51" East a distance of 43.86 feet, South 84°48'26" East a distance of 85.09 feet, South 73°52'48" East a distance of 100.00 feet, North 80°32'28" East a distance of 114.54 feet, South 73°52'48" East a distance of 600.37 feet, South 73°52'48" East a distance of 90.56 feet, North 33°48'39" East a distance of 59.06 feet and North 21°39'05" West a distance of 8133.30 feet from said monument, said monument having NC Grid Nad 83(2007) coordinates of North 497,646.43 feet and East 2,580,797.84 feet, said monument also being South 80°37'41' West a distance of 4826.06 feet from NCGS monument E146 AZ MK with NC Grid Nad 83(2007) coordinates of North 498,432.22 feet and East 2,585,559.03 feet, said point being the true **Point of Beginning;**

Thence from the **Point of Beginning;** the following bearings and distances North 38°03'35" East, a distance of 120.83 feet, North 15°44'23" East, a distance of 103.14 feet, North 30°33'29" West, a distance of 128.97 feet, North 14°18'06" West, a distance of 62.41 feet, North 12°37'49" East, a distance of 69.28 feet, North 60°56'18" East, a distance of 364.23 feet, South 76°56'09" East, a distance of 44.85 feet, South 51°56'50" East, a distance of 349.37 feet to an iron rod on the common property line between City of New Bern and J. Alfred Mayo Jr.; thence with said line South 51°56'50"

East, a distance of 282.00 feet to an iron rod; thence South 72°36'50" East, a distance of 38.97 feet to an iron rod; thence South 72°36'50" East, a distance of 116.43 feet to a point in Jack Smith Creek; thence the following calls with the creek South 19°24'45" West, a distance of 76.56 feet, South 82°40'33" West, a distance of 48.77 feet, South 45°01'50" West, a distance of 30.59 feet, South 12°14'11" West, a distance of 61.45 feet, South 35°22'38" West, a distance of 16.48 feet, North 64°37'54" West, a distance of 16.43 feet, North 69°22'39" West, a distance of 34.18 feet, North 58°41'20" West, a distance of 8.54 feet, South 18°17'20" West, a distance of 8.48 feet, South 10°59'51" West, a distance of 45.06 feet, South 06°04'38" West, a distance of 11.12 feet, South 28°21'03" West, a distance of 52.14 feet, South 48°12'23" West, a distance of 36.68 feet, North 81°42'08" West, a distance of 40.02 feet, South 50°24'04" West, a distance of 44.79 feet, South 76°06'59" West, a distance of 55.61 feet, South 12°04'34" West, a distance of 16.44 feet, South 29°20'32" East, a distance of 7.77 feet, South 61°30'08" East, a distance of 13.85 feet, South 58°32'53" East, a distance of 9.76 feet, South 15°30'47" East, a distance of 8.66 feet, South 30°43'34" West, a distance of 49.97 feet, South 48°45'13" West, a distance of 10.19 feet, South 71°56'21" West, a distance of 11.41 feet, South 71°42'29" West, a distance of 22.41 feet, South 68°37'32" West, a distance of 59.03 feet, South 69°07'32" West, a distance of 26.88 feet, South 75°30'00" West, a distance of 18.85 feet, South 67°27'13" West, a distance of 33.30 feet to a point on the northern right of way of the Atlantic and North Carolina Railroad (100' right of way); thence leaving said right of way and Jack Smith Creek North 66°55'18" West, a distance of 298.95 feet, North 53°28'20" West, a distance of 45.99 feet, North 05°42'47" West, a distance of 29.22 feet, North 90°00'00" West, a distance of 23.28 feet, South 25°28'46" West, a distance of 22.55 feet, North 63°36'52" West, a distance of 152.66 feet, and North 15°20'05" West, a distance of 88.84 feet to the **Point of Beginning**. Containing 571,194 Sq. Ft. or 13.113 ACRES, more or less all as shown on a map prepared by Mckim and Creed titles "Conservation Easement Survey for the State of North Carolina, Ecosystem Enhancement Program, and Simmons Street Storm Water Wetland at Jack Smith Creek, SPO 25-Y EEP 92646" Dated June 5, 2009.

Exhibit D

Image ID: 000001843602 Type: CRP
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Ecosystem Enhancement PROGRAM

January 12, 2009

Mr. Danny Meadows, Director of Public Works
City of New Bern
PO Box 1129
New Bern, NC 28563

Reference: **Simmons Street Stormwater Wetland - Letter of Understanding**

Dear Mr. Meadows:

The NC Ecosystem Enhancement Program (NCEEP) and the City of New Bern have been working together and with NC State University and the NC Clean Water Management Trust Fund on a proposed stormwater wetland adjacent to Simmons Street in New Bern, NC. The purpose of this letter of understanding is to clarify said responsibilities of the NCEEP and the City of New Bern related to the stormwater wetland best management practice (BMP). Details for maintenance and repair responsibilities are contained in the attached *Simmons Street Stormwater Wetland Maintenance and Repair Plan (Attachment A).*

The Project is intended to enhance water quality within the Jack Smith Creek and Neuse Estuary drainage areas (Cataloging Unit # 03020204, Hydrologic Unit 03020204020010) through the reduction of nitrogen and phosphorous discharges into surface waters within the watersheds. This reduction is to be accomplished through the use of a Stormwater Wetland BMP as outlined in the *Simmons Wetland Project Statement*, a copy of which is attached hereto as *Attachment B*.

The NCEEP will be responsible for the financial costs of design and construction associated with the stormwater BMP. The NCEEP will also be responsible for all costs associated with monitoring and maintaining the physical and biological aspects of the constructed stormwater BMP 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 New Bern. 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 New Bern will donate a conservation easement to the State for the BMP project area. City will assume maintenance and repair responsibility after the initial one-year warranty period and once both parties agree that the basic conditions of the attached plan have been met. The City will follow guidelines outlined in the attached *Stormwater Wetland Repair and Maintenance Plan*, the North Carolina Division of Water Quality (DWQ) *Stormwater Best Management Practices Manual (July 2007)*, and NC State University maintenance guidelines for

stormwater wetlands and wet detention ponds as described in *Urban Waterways: Maintenance of Stormwater Wetlands and Wet Ponds* to monitor, maintain, and repair (as necessary) the stormwater BMP to function properly as designed.

The City is responsible for the funding, design and construction of the stormwater pump stations along Jack Smith Creek that will direct water to the proposed stormwater BMP, at no cost to the NCEEP.

The City will provide a designated contact person to coordinate and review all aspects of the project with the NCEEP and its contractors or consultants. The City will respond in writing to any Project approval request within thirty (30) days from the date of request. If the City fails to respond within thirty (30) days of the request, the request will be deemed approved by City. The NCEEP and the City will meet with contractors and consultants on a regular basis, or as needed, to discuss the progress of the project.

Both the NCEEP and the City agree to work cooperatively to develop and implement a design plan that is agreeable to all parties. Both parties will work together with respect to coordinating the timing of each party's responsibilities as related to design, permitting and construction. Both parties will work cooperatively to develop and implement remedial action plans that are agreeable to all agencies in the event that post-construction remedial activities are necessary. Details related to the implementation of the remedial action plans will be jointly discussed by both entities as necessary.

In summary, this letter establishes a clear understanding of financial and management responsibilities of NCEEP and the City of New Bern related to the stormwater wetland BMP project. If you are in agreement with what is stated in this letter and the attachments, please sign both copies of this letter in the designated area below and return one copy to NCEEP at the address shown on the first page of this letter. In addition, if you have any questions, please contact Kristin Miguez at (910) 796-7475 or via email at Kristin.Miguez@ncmail.net.

With Best Regards,

Suzanne Klimek

Suzanne Klimek
Director of Operations

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SK/kem

cc: Kristin Miguez - EEP Project Manager

Agreed to and accepted by: Mack L. Freeze
Name/Title (print): Mack L. Freeze
Date: 3/10/09

Attest: Vicki H. Johnson
Name/Title (print): Vicki H. Johnson
Date: 3/10/09

Exhibit E

Table 1.0
Maintenance and Repair for Stormwater Wetlands

BMP element:	Potential problem:	How to remediate the problem:
The entire BMP	Trash/debris is present.	Remove the trash/debris.
The perimeter of the wetland	Areas of bare soil and/or erosive gullies have formed.	Re-grade 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.
	Vegetation is too short or too long.	Maintain vegetation at a height of approximately six inches. Surrounding areas and berms should be mowed regularly and at least twice per year.
Pump Inlet Area	Sediment deposition	Inspect the area twice per year for sediment build-up. Remove sediment as necessary to ensure proper pump operation.
	Trash accumulation	Inspect area regularly and remove trash.
	The pipe is clogged (if applicable).	Unclog the pipe. Dispose of the sediment offsite.
	Woody vegetation or debris on the Pump area berm.	Berm must remain free of woody vegetation, and cleaned of debris to maintain access.
Forebay pools	Sediment has accumulated and reduced the depth of the pool. Average sediment level is within one foot of the water surface.	Annual monitoring of sediment levels. Refer to NCSU documents. Search for the source of the sediment and remedy the problem if possible. Remove the sediment and dispose of it in a location where it will not cause impacts to streams or the BMP.
	Erosion has occurred.	Provide additional erosion protection such as reinforced turf matting or riprap if needed to prevent future erosion problems.

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BMP element:	Potential problem:	How to remediate the problem:
Forebay pools	Non-native, invasive plants are present.	Remove the plants, preferably by hand. If a pesticide is used, wipe it on the plants rather than spraying.
Deep pool, shallow water and shallow land areas	Algal growth covers over 50% of the deep pool and shallow water areas.	Consult a professional to remove and control the algal growth.
	Cattails, or other invasive plants, cover 50% of the deep pool and shallow water areas.	Remove the plants by wiping them with pesticide (do not spray) – consult a professional.
	Shallow land remains flooded more than 5 days after a storm event.	Unclog the outlet device immediately.
	Plants are dead, diseased or dying.	Determine the source of the problem: soils, hydrology, disease, etc. Remedy the problem and replace plants. Provide a onetime fertilizer application to establish the ground cover if a soil test indicates it is necessary.
	Best professional practices show that pruning is needed to maintain optimal plant health.	Prune according to best professional practices.
	Sediment has accumulated and reduced the depth to 75% of the original design depth of the deep pools (see diagram below).	Search for the source of the sediment and remedy the problem if possible. Remove the sediment and dispose of it in a location where it will not cause impacts to streams or the BMP.

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BMP element:	Potential problem:	How to remediate the problem:
Embankments/berms	An annual inspection shows that the embankment needs repair.	Make all needed repairs.
	Woody vegetation growth	Accessible berms should be mowed regularly or at a minimum of twice per year.
	Evidence of muskrat or beaver activity is present.	Use traps to remove muskrats and consult a professional to remove beavers.
The dissipater pond outlet and the main wetland outlet structure	Clogging has occurred.	Inspect the outlet structure at a minimum of twice per year. Clear any sediment accumulation and debris that may reduce the effectiveness of the structure. Clean out the outlet device. Dispose of the sediment offsite.
	The structure is damaged.	Repair or replace the outlet device.
	Flashboards are damaged or missing.	Repair or replace any damaged or lost boards. Install to minimize leaking.
	Concrete is broken or cracked. Structure is leaking.	Repair or grout any cracked areas. Seal leaks with grout or hydraulic cement. Significant damage should be assessed by an Engineer.
The receiving water	Erosion or other signs of damage have occurred at the outlet.	Repair damage. Provide additional erosion protection such as reinforced turf matting or riprap if needed to prevent future erosion problems.

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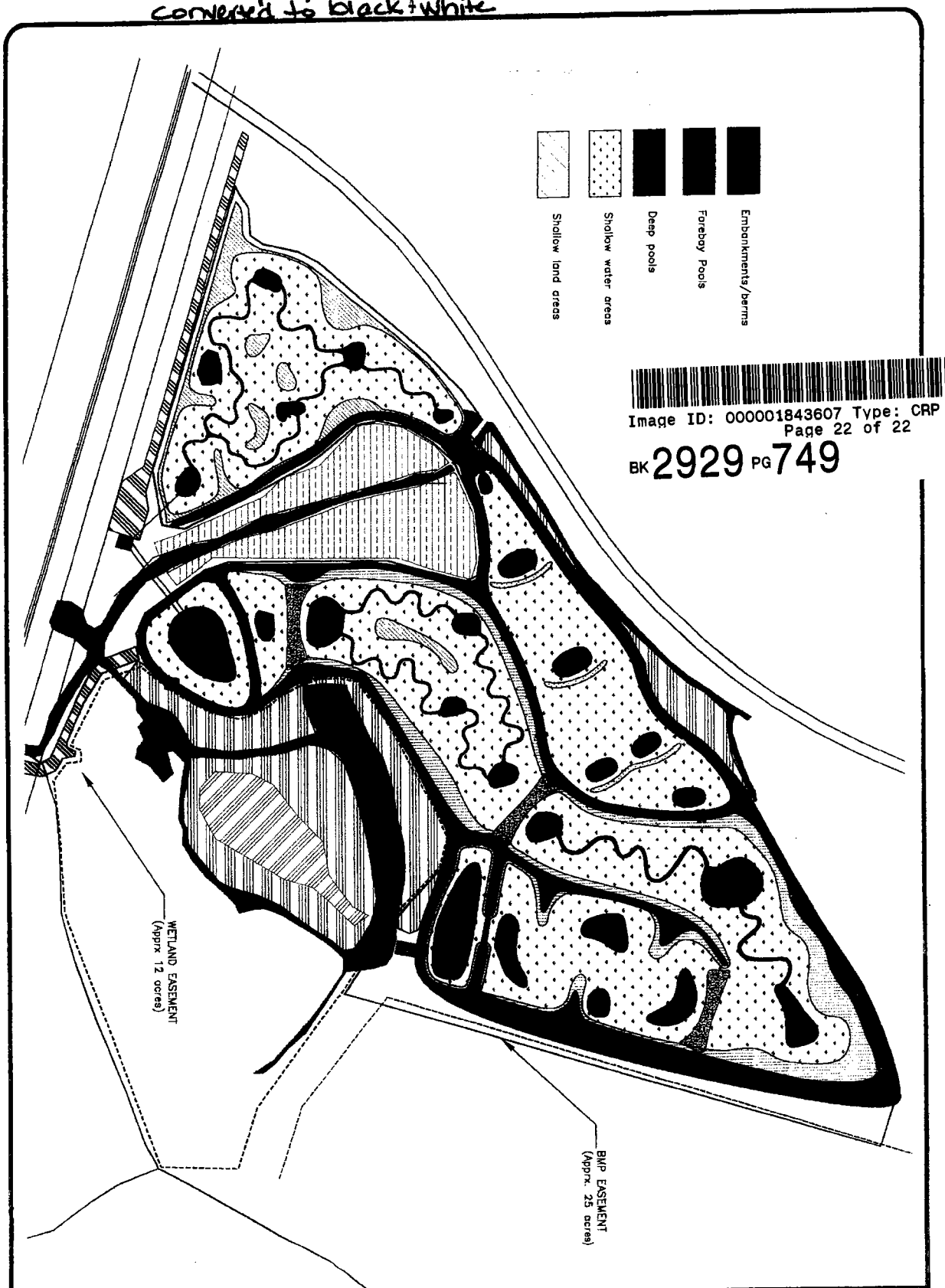
this map goes w/ Exhibit B and must be converted to black + white



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PAGE NUMBER 1 OF 1	EASEMENT MANAGEMENT ZONES Jack Smith Creek Stormwater Project Craven County, NC	FILE Stormwater	PROJECT Stormwater	SCALE 1" = 300'	DATE Feb. 17, 2000	DRAWN KJB	DESIGNED KJB, BH, KB, TD

NCSU
Biological and Agricultural Engineering