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RIGHT OF WAY DEPARTMENT
N. C. D. O. T.
79 TURTLE CREEK DRIVE
ASHEVILLE, NC 28803

FILED

BOOK ____ PAGE ____

1999 AUG 24 PM 12: 05
Jena Lee Buckner
JENA LEE BUCKNER
REGISTER OF DEEDS
MADISON CO. N.C.

NORTH CAROLINA
MADISON COUNTY

CONSERVATION EASEMENT
and
EASEMENT OF INGRESS AND EGRESS

THIS CONSERVATION EASEMENT and EASEMENT OF INGRESS AND EGRESS, made this 21st day of April, 1999, by and between Thomas Michael Charles, Margaret Eleanor McGinnis and Eileen Brightmore McGinnis, hereinafter called the "Grantors", and the North Carolina Wildlife Resources Commission, hereinafter called the "Grantee", and administered by the North Carolina Department of Transportation, hereinafter called the "Administrator", provides the following:

WITNESSETH

WHEREAS, the Grantors own in fee simple approximately 42.3 acre(s) of land situated in Township number 5 of Madison County and more particularly described in Deed Book 71, page 573; Deed Book 71, page 574; Deed Book 95, page 281; Deed Book 95, page 565; Deed Book 225, page 418; Deed Book 225, page 431; and Plat Book 3, Page 846 of the Madison County Registry, North Carolina, hereinafter this land is referred to as the "Property";

WHEREAS, the Administrator is an agency of the State of North Carolina whose purpose includes the construction of transportation projects for public use and has the authority to acquire land for the purpose of mitigating environmental impacts of these transportation projects;

WHEREAS, the Administrator is beginning to restore 1100 feet of stream in Madison County on the said Property through the Grantee;

WHEREAS, the Grantee is an agency of the State of North Carolina whose purposes include the restoration and enhancement of fish and wildlife habitat; is authorized by the laws of the State of North Carolina to accept, hold and administer conservation easements; possesses the authority to accept and is willing to accept this Conservation Easement from the Grantors under the terms and conditions hereinafter described;

WHEREAS, the Grantors is willing to grant a perpetual Conservation Easement over 1.1 acres of the Property, thereby restricting and limiting the use of land within the Conservation Easement area to the terms and conditions and for the purposes hereinafter set forth, and to further grant the right of ingress and egress to the Conservation Easement area over, upon and along the Property as more particularly set forth hereinafter;

WHEREAS, the Grantors consent to the Administrator assigning this Conservation Easement over the designated portion of the Property to another state agency, the WRC, whose purpose is consistent with this Conservation Easement or to a non-profit corporation whose purposes are consistent with this Conservation Easement.

Exhibit B: Metes and Bounds description of the Easement

This description is for the conservation easement acquired by the North Carolina Department of Transportation, for the North Carolina Wildlife Resources Commission, from that property conveyed to Thomas Charles, Margaret McGinnis and Eileen McGinnis at Deed Book 225, Page 418 and Plat Book 3, Page 846 of the Madison County Registry. It is written from an actual field survey performed March 1, 1999 by Roger D. Woods, Jr., PLS, L-2649 shown on that map entitled "Survey For Conversation Easement Acquired By North Carolina Department of Transportation For The North Carolina Wildlife Resources Commission" recorded in Plat Book 4, Page 238 of the Madison County Registry, North Carolina.

From the point of beginning, a new iron pin set at the intersection of the southernmost property line of the Thomas & Margaret McGinnis property and the West right of way (22 feet total width) of SR 1158(South Fork Road), thence with said property line, and crossing the South Fork of Big Pine Creek, South 86 degrees 15 minutes 49 seconds West a distance of 29.97 feet to an existing iron pin; thence South 86 degrees 47 minutes 05 seconds West a distance of 39.87 feet to a new iron pin; thence leaving said property line North 7 degrees 24 minutes 36 seconds East a distance of 38.87 feet to a new iron pin ; thence North 8 degrees 57 minutes 45 seconds East a distance of 56.24 feet to a new iron pin ; thence North 12 degrees 29 minutes 46 seconds East a distance of 100.04 feet to a new iron pin ; thence North 8 degrees 02 minutes 45 seconds East a distance of 139.16 feet to a new iron pin ; thence North 2 degrees 13 minutes 57 seconds West a distance of 27.57 feet to a new iron pin ; thence North 12 degrees 07 minutes 51 seconds West a distance of 16.37 feet to a new iron pin ; thence North 16 degrees 51 minutes 34 seconds West a distance of 195.18 feet to a new iron pin ; thence North 28 degrees 49 minutes 06 seconds West a distance of 128.21 feet to a new iron pin ; thence North 16 degrees 58 minutes 39 seconds West a distance of 128.60 feet to a new iron pin ; thence North 44 degrees 52 minutes 24 seconds West a distance of 56.62 feet to a new iron pin ; thence North 59 degrees 09 minutes 59 seconds West a distance of 217.99 feet to a new iron pin ; thence North 2 degrees 49 minutes 51 seconds East a distance of 8.57 feet to an existing iron pin; thence with the northernmost property line of said McGinnis property line, and crossing the South Fork of Big Pine Creek, North 81 degrees 17 minutes 37 seconds East a distance of 82.88 feet to an existing iron pin; thence leaving said property line South 46 degrees 48 minutes 16 seconds East a distance of 56.62 feet to an new iron pin; thence South 54 degrees 00 minutes 48 seconds East a distance of 36.16 feet to a new iron pin ; thence South 84 degrees 27 minutes 28 seconds East a distance of 33.40 feet to a new iron pin ; thence South 58 degrees 18 minutes 35 seconds East a distance of 26.17 feet to a new iron pin ; thence South 44 degrees 27 minutes 28 seconds East a distance of 56.49 feet to a new iron pin; thence South 37 degrees 11 minutes 46 seconds East a distance of 44.13 feet to a new iron pin on a circular curve on the West right of way (22 feet total width) of SR 1158 (South Fork Road), thence with said right of way and the circular curve to the right, having a radius of 717.45 feet and a tangent bearing of South 16 degrees 23 minutes 08 seconds East; thence run along the arc of said circular curve through a central angle of 3 degrees 23 minutes 39 seconds for a distance of 42.50 feet;

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thence South 12 degrees 59 minutes 30 seconds East a distance of 70.87 feet to the beginning of a circular curve to the left and having a radius of 434.27 feet; thence run along the arc of said circular curve through a central angle of 14 degrees 37 minutes 47 seconds for a distance of 110.89 feet; thence South 27 degrees 37 minutes 17 seconds East a distance of 122.76 feet to the beginning of a circular curve to the right and having a radius of 236.56 feet; thence run along the arc of said circular curve through a central angle of 36 degrees 33 minutes 22 seconds for a distance of 150.93 feet; thence South 8 degrees 56 minutes 05 seconds West a distance of 176.80 feet to a point on a circular curve to the left and having a radius of 389.45 feet and a tangent bearing of South 8 degrees 56 minutes 05 seconds West; thence run along the arc of said circular curve through a central angle of 20 degrees 26 minutes 37 seconds for a distance of 138.96 feet; thence South 11 degrees 30 minutes 32 seconds East a distance of 30.27 feet to the point of beginning, containing 1.11 acres more or less.

WHEREAS, the Administrator, under a Section 404 permit granted by the U.S. Army Corps of Engineers (USACE), must conduct certain off-site trout stream enhancement for impacts to trout streams resulting from the construction of I-26 corridor from northeast of US 19 to the Tennessee state line at Sam's Gap (TIP No. A-10 C & D);

WHEREAS, the Administrator has entered into an agreement with the Grantee to reimburse them for conducting the restoration of such off-site trout stream enhancement;

WHEREAS, the USACE has reviewed and approved the use of the Conservation Easement on the Property to mitigate for the stream impacts, and such will satisfy the said permit conditions after the completion of the stream monitoring period;

WHEREAS, the Grantee has prepared a plan that describes existing stream conditions and details conceptual mitigation practices and this plan has been reviewed and accepted by the Grantors;

NOW THEREFORE, in consideration of the sum of $4925.00 and other valuable considerations to the Grantors in hand paid, the receipt of which is hereby acknowledged, and in further consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, the Grantors hereby grants and conveys unto the Grantee and its successors or assigns forever and in perpetuity a Conservation Easement, pursuant to the USACE Section 404 permit requirements, of the nature and character and to the extent hereinafter set forth, in respect to the land of the grantors situated in Madison County, North Carolina, as described in Exhibit A (map) and Exhibit B (metes and bounds description). Together with a perpetual right of ingress and egress over and upon the Grantor's roads and paths, or other access ways acceptable to the Grantors, on the Property having been described above in the Madison County Registry as an Easement of Ingress and Egress to and from the Conservation Easement hereinabove described.

The purposes of this Conservation Easement are to provide environmental protection for surface waters, to provide restoration and enhancement of stream and riparian habitat for the benefit of fish and wildlife, to protect the conservation values of the easement area designated on the Property and to maintain permanently the dominant woodland, scenic and natural character of the easement area. To achieve these purposes, the parties hereto agree to the conditions and restrictions set forth herein and it shall be so held, maintained, and used therefor.

ARTICLE I. DURATION OF EASEMENT

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by the Grantee or its successors and/or assigns against Grantors, Grantor's personal representatives, heirs, devisees, successors and assigns, lessees, agents and licensees.

ARTICLE II. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the designated easement area inconsistent with the purposes of this Conservation Easement is prohibited. The Easement Area shall be maintained in its

natural, scenic and open condition and restricted from any development that would significantly impair or interfere with the conservation values of this easement area. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder.

A. Disturbance of Natural Features. Any change, disturbance, alteration or impairment of the natural, scenic and aesthetic features of the easement area or any introduction of non-native plants and/or animal species is prohibited unless the Grantee shall give its prior written consent or unless otherwise expressly permitted herein. Livestock shall cross or access water at areas appointed and agreed upon in the conceptual mitigation plan and at such locations shown on the property boundary survey attached. If no such areas are demarcated and agreed to in the Conceptual Stream Mitigation Plan attached hereto, then access to the Easement Area for these purposes is forbidden.

B. Agricultural, Grazing and Horticultural Use. Agricultural, grazing and horticultural use (landscaping) of the easement area is prohibited. Grantors may have limited access to the easement area for the purpose of operating irrigation pumps. In an emergency situation (no other water source is available) livestock may access the stream for water, access should be limited to one side of the steam for a length not to exceed 30 linear feet and the Grantee should be notified immediately.

C. Silvicultural Use and Land Clearing. There may be no destruction or cutting of trees or plants on the Easement Area, except in accordance with the Conceptual Stream Mitigation Plan attached hereto or upon approval of the Grantee. The gathering of firewood in the Easement Area shall be limited to dead trees, such that the gathering is consistent with purposes of this Conservation Easement. Removal of large trees may be allowed in some cases pending approval by the Grantee.

D. Hunting and Fishing. Grantors expressly reserves the right to hunt and fish on the Easement Area and to control access of all persons for the purpose of hunting and fishing; provided that these activities do not impact the protection and conservation of any animal/trout habitat or other conservation values of the Easement Area.

E. Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Easement Area is prohibited.

F. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner on the Easement Area nor shall there be any activities conducted on the Easement Area or on

adjacent property if owned by the Grantors and his successors which would cause erosion or siltation on the Easement Area.

G. Water Quality and Drainage Pattern. There shall be no activities conducted in the Easement Area that would be detrimental to water purity or to any of the plants or habitats within the Easement Area. There shall be no activities that would alter natural water levels, drainage, sedimentation and/or flow in or over the Easement Area, or cause soil degradation or erosion. Diking, dredging, alteration, draining, filling or removal of wetland or stream is prohibited. The Grantee maintains the right to install, operate and maintain structures for the purpose of reestablishing, protecting, and enhancing stream functional values, including those described in the Conceptual Stream Mitigation Plan for the Easement Area.

H. Quiet Enjoyment. The Grantors, for themselves, their successors, assigns, invitees and licensees, hereby reserves the right to quiet enjoyment of the Easement Area, the right to ingress and egress to the Easement Area and all adjacent property of the Grantors, the right to continue such uses as exist as of the date of this grant not inconsistent with this Conservation Easement and the right to sell, transfer, gift or otherwise convey the Easement Area, in whole or in part, provided such sale, transfer or gift conveyance is subject to the terms of this Conservation Easement and written notice is provided to the Grantee in accordance with the provisions herein below.

ARTICLE III. ENFORCEMENT & REMEDIES

A. The Grantee has the right to prevent any action or use of the Easement Area that is inconsistent with the purpose of this Conservation Easement. Upon any breach of the terms of this Conservation Easement by Grantors or by a third party, which comes to the attention of the Grantee or Administrator, the Grantee shall notify the Grantors in writing of such breach. The Grantors shall have thirty (30) days after receipt of such notice to begin undertaking actions that are reasonably calculated to correct promptly 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 including the right to require that the land be restored promptly to the condition required by this Conservation Easement. The Grantee shall have the power and authority, consistent with its statutory authority, to institute and maintain any suits and proceedings as the Grantee may deem advisable in its judgement; (a) to prevent any impairment of the Easement area on the Property by any 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. If the Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the easement area on the Property, the Grantee may pursue its remedies without prior notice to Grantors, but shall call the Grantors to leave a voice message and shall

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exercise within two business days an effort to notify the Grantors and explain the action undertaken.

B. The Grantors reserves the right to take action against the Grantee for use of the Easement Area in a way that is inconsistent with the purpose of this Conservation Easement.

C. Nothing contained herein shall be construed to entitle the Grantors to bring any action against Grantee for any injury or change in the Property resulting from causes beyond the Grantee's control, including fire, flood, storm, war, acts of God or third parties, or from any prudent action taken in good faith by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Property resulting from such causes, in accordance hereunder.

D. The Grantee may enter the Grantor's adjoining property only for the purposes set forth in this agreement and only in accordance with the Easement for Ingress and Egress described hereinabove. The Grantee will attempt to notify the Grantors before entering the Property.

E. No failure on the part of the Grantee to enforce any covenant or provision hereof shall be a waiver to discharge or invalidate such covenant or any other covenant, condition, provision hereof or affect the right of Grantee to enforce in the same in the event of a subsequent breach or default.

ARTICLE IV. PUBLIC ACCESS

The granting of this Conservation Easement does not convey to the public the right to enter the Property for any purpose whatsoever. However, the public has the right to view the Property from adjacent publicly accessible areas.

ARTICLE V. EXHIBIT, DOCUMENTATION AND TITLE

A. Legal Description and Exhibits. The attached Exhibit A (map), Exhibit B (metes and bounds description), Exhibit C (conceptual mitigation plan) and Exhibit D (construction plan) are incorporated in and made a part of this instrument by reference

B. Title. The Grantors covenant and represent that the Grantors are the sole owners and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that the Property is free and clear of any and all encumbrances, except easements of record and Grantors covenant that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement.

C. Mitigation Plans. The parties acknowledge that the "Conceptual Stream Mitigation Plan", dated July 1998 was developed by a WRC biologist and accepted by

the Grantors. A copy of this plan is on file at the office of the Administrator and the Grantee, and is also attached hereto and incorporated herein. This document describes the conditions of the Property and the plan for restoring it.

ARTICLE VI. MISCELLANEOUS

A. Subsequent Transfers. Grantors agrees for themselves, their heirs, successors and assigns, to notify the Grantee in writing of the names and addresses of any party to whom the Property, or any part thereof, is to be transferred at or prior to the time said transfer is consummated. Grantors, for themselves, their heirs, successors and assigns, further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent lease, deed or other legal instrument by which any interest in the Property is conveyed.

B. Conservation Purpose.

(1) The Grantee, for themselves, and their successors and assigns agree that this Conservation Easement shall be held exclusively for conservation purposes.

(3) The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, provided, however that the Grantee hereby covenant and agree, that in the event they transfer or assign this Conservation Easement they hold under the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized or operated primarily for one of the conservation purposes specified in Section 170 (h)(4)(A) and Section 2031 of the Internal Revenue Code, and the Trust and the State 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 to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance, set forth in the Recitals herein.

(4) The Grantors agree to pay any real estate taxes or other assessments levied on the Property.

C. Construction of Terms. This Conservation Easement shall be construed to promote the purposes of the North Carolina enabling statute set forth in N.C.G.S. 121-34, which authorizes the creation of Conservation Easements for purposes including those set forth in the recitals herein, and the conservation purposes of this Conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.

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D. Entire Agreement. 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 this 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.

G. Notices. Any notices shall be sent by registered or certified mail, return receipt requested, addressed to the parties as set forth above, or to such other addresses such party may establish in writing to the other. In any case where the terms of this Conservation Easement require the consent of any party, such consent shall be requested by written notice. Such consent shall be deemed to have been denied unless, within ninety (90) days after receipt of notice, a written notice of approval has been mailed to the party requesting consent.

H. Amendments. Grantors, Grantee and Administrator are free to jointly amend this Conservation Easement to meet changing conditions, provided that no amendment will be allowed that is inconsistent with the purposes of this Conservation Easement or affects the perpetual duration of this Conservation Easement. Such amendment(s) shall be effective upon recording in the public records of Madison County North Carolina.

E. Recording. The Administrator shall record this instrument and any amendment hereto in timely fashion in the official records of Madison County, North Carolina, and may re-record it at any time as may be required to preserve the rights under this Conservation Easement.

TO HAVE AND TO HOLD the aforesaid easements unto **the NORTH CAROLINA WILDLIFE RESOURCES COMMISSION,** its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantors, Grantor's personal representatives, heirs, successor and assigns, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantors hereto have set Grantor's hand and seal and the Administrator and the Grantee by authority duly given, has hereunto caused these presents to be executed by its representatives and their seals affixed, as of the dates shown below, to be effective upon the date of recordation in the public records of Madison County, North Carolina.

GRANTORS:

Thomas Michael Charles

Thomas Michael Charles 3 May 99 (Seal)

Name Margaret Eleanor McGinnis DATE

Margaret Eleanor McGinnis May 3, 1999 (Seal)

Name Eileen Brightmore McGinnis by Margaret E. McGinnis, Attorney-in-fact for Eileen Brightmore McGinnis DATE

Eileen Brightmore McGinnis May 18, 1999 (Seal)

Name by Margaret E. McGinnis, Attorney-in-FACT FOR Eileen Brightmore McGinnis DATE

GRANTEE:

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

Charles R. Fullwood 8-9-99 (Seal)

Executive Director Charles R. Fullwood DATE

ADMINISTRATOR:

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

AUG 1 2 1999 8-11-99 (Seal)

DATE

ASS'T MANAGER OF RIGHT OF WAY

SEAL-STAMP
NORTH CAROLINA
MADISON COUNTY

I, Betty T. Best a Notary Public of Pitt County do hereby certify that Thomas Michael Charles and Margaret Eleanor McGinnis, Grantors, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this 3rd day of May 1999.

My commission expires My Commission Expires August 17, 2003 Betty T. Best
Signature of Notary Public

The foregoing Certificate(s) of CONSERVATION EASEMENT and EASEMENT OF INGRESS AND EGRESS is/ are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof.

_____
REGISTER OF DEEDS FOR MADISON COUNTY

By _____
Deputy/Assistant-Register of Deeds

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NORTH CAROLINA

Pitt County

I, Kristie L. Webb, a Notary Public of Pitt County, North Carolina, do hereby certify that Margaret E. McGinnis, attorney-in-fact for Eileen Brightmore McGinnis, personally appeared before me this day, and being by me duly sworn, says that he/she executed the foregoing and annexed instrument for and in behalf of Eileen Brightmore McGinnis and that his/her authority to execute and acknowledge said instrument is contained in an instrument duly executed, acknowledged, and recorded in the office of the Register of Deeds, Pitt Madison County, North Carolina on the 17 day of May, 1999, in Book 255 at Page 414, and that this instrument was executed under and by virtue of the authority given by said instrument granting him/her power of attorney; that the said Margaret E. McGinnis acknowledged the due execution of the foregoing and annexed instrument for the purposes therein expressed for and in behalf of the said Eileen Brightmore McGinnis.

WITNESS my hand and official seal, this 17 day of May, 1999.

Kristie L. Webb
NOTARY PUBLIC

My Commission expires: Sept. 16, 2003

NORTH CAROLINA

_____ County

The annexed certificate of _____, a Notary Public of _____ County, North Carolina, is certified to be correct.

This the _____ day of _____, 19____.

North Carolina--Madison County

The foregoing certificate(s) of Betty T. Best, Kristie L. Webb ~~a Notary or~~ Notaries Public ~~is~~ (are) certified to be correct. This instrument and this certificate are duly registered at the date, time, and in the book and page shown on the first page hereof.

Jena Lee Buckner
Register of Deeds

_____
Deputy