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By: Stephanie Hayne Dep.
NETA LEE BLACKNER
REGISTER OF DEEDS
MADISON CO. N.C.

RIGHT OF WAY DEPARTMENT
N.C. Department of Transportation
79 Turtle Creek Drive
Asheville, NC 28803

NORTH CAROLINA
MADISON COUNTY

CONSERVATION EASEMENT
and
EASEMENT OF INGRESS AND EGRESS

THIS CONSERVATION EASEMENT and EASEMENT OF INGRESS AND EGRESS, made this 28th day of May, 1999, by and between Donald and Nancy Fosson, 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 13.5 acre(s) of land situated in Township number 4 of Madison County and more particularly described in Deed Book 182, page 736 and Deed Book 207, page 307 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 1700 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 1.18 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.

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);

1751 MADISON COUNTY
Sep 29 1999 $10.00
STATE OF NORTH CAROLINA
Real Estate Excise Tax

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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 $4720.00 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.

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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. This item does not pertain to normal agricultural activities which follow best management practices as prescribed by the Natural Resource Conservation Service and Agriculture Extension Service.

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

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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.

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

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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.

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GRANTORS:

Donald E. Fosson 5-28-99 (Seal)
DONALD FOSSON (Donald E. Fosson) DATE

Nancy Fosson 5-28-99 (Seal)
NANCY FOSSON DATE

Micky Clemmons 6/3/99 (Seal)
Micky Clemmons (witness) DATE

GRANTEE: NORTH CAROLINA WILDLIFE RESOURCES COMMISSION

Charles R. Fullwood 6-9-99 (Seal)
Executive Director Charles R. Fullwood DATE

ADMINISTRATOR:
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

SEP 2 3 1999 9/10/99 (Seal)
ASS'T MANAGER OF RIGHT OF WAY DATE

SEAL-STAMP
NORTH CAROLINA
MADISON COUNTY

I, _____ a Notary Public of _____ County do hereby certify that _____, Grantors, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this _____ day of _____ 199__.

My commission expires _____

_____
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.

Jena Lee Buckner
REGISTER OF DEEDS FOR MADISON COUNTY

By Stephanie Haynes
Deputy/~~Assistant~~-Register of Deeds

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NORTH CAROLINA

Buncombe County

I, Robert L. Haskett, JR., a Notary Public of Buncombe County, North Carolina, certify that Micky Clemmons, personally appeared before me this date, and being duly sworn, stated that, in his presence Donald E. Fosson And wife, Nancy Fosson signed the foregoing instrument.

Witness my hand and official seal this 4th day of AUGUST, 1999.

My commission expires:

12/06/2002

Robert L. Haskett Jr.
NOTARY PUBLIC

The annexed certificate of Robert L. Haskett Jr., a Notary Public of Buncombe County, North Carolina, is certified to be correct.

This the 29th day of Sept., 1999.

Jean Lee Buckner
REGISTER OF DEEDS
By Stephanie Payne
Dep.

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EXHIBIT B

This description is of a conservation easement acquired by the North Carolina Department of Transportation, for the North Carolina Wildlife Resources Commission, from that property conveyed to Donald E. Fosson and wife Nancy A. Fosson at Deed Book 207, Page 307, of the Madison County Registry, and an unrecorded plat prepared by J. C. O'Keefe, PLS on APRIL 15, 1993. 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 Conservation Easement Acquired By North Carolina Department of Transportation For The North Carolina Wildlife Resources Commission" recorded in Plat Book 4, Page 236 of the Madison County Registry, North Carolina.

From the point of beginning, said point of beginning being the northwestern most corner of that property referred to above owned by Donald E. Fosson and wife Nancy A. Fosson at Deed Book 207, Page 307, and as shown on an unrecorded plat prepared by J. C. O'Keefe, PLS on APRIL 15, 1993 and also being in the centerline of Paint Fork Creek, located North 53 degrees 15 minutes 58 seconds West, 177.70 feet from a planted stone, the terminus call of the adjoining deed found at deed book 107, page 363, thence with and up the centerline of Paint Fork Creek the following courses and distances; North 67 degrees 35 minutes 06 seconds East a distance of

69.71 feet to a point inside a twenty foot wide right of way as described in the above noted Fosson deed, thence North 83 degrees 30 minutes 05 seconds East a distance of 273.01 feet to a point, thence North 85 degrees 13 minutes 39 seconds East a distance of 135.39 feet to a point, thence North 87 degrees 14 minutes 33 seconds East a distance of 353.26 feet to a point, thence South 66 degrees 10 minutes 42 seconds East a distance of 127.88 feet to a point at the intersection of the centerlines of Paint Fork Creek and Moxley's Branch. Thence with the centerline and up said branch, and leaving the run of Paint Fork Creek, South 20 degrees 50 minutes 29 seconds East a distance of 35.00 feet to a point, thence South 2 degrees 29 minutes 29 seconds East a distance of 80.30 feet to a point, thence South 15 degrees 56 minutes 29 seconds East a distance of 97.00 feet to a point, thence South 2 degrees 15 minutes 31 seconds West a distance of 57.00 feet to a point, thence South 55 degrees 43 minutes 29 seconds East a distance of 19.60 feet to a point , thence South 71 degrees 30 minutes 29 seconds East a distance of 33.00 feet to a point, thence South 47 degrees 08 minutes 29 seconds East a distance of 17.20 feet to an existing 1 ½ inch iron pipe in a rock drill hole in the centerline of Moxley's Branch, thence continuing with the centerline of said branch, South 9 degrees 07 minutes 18 seconds East a distance of 290.48 feet to a point, thence South 12 degrees 20 minutes 18 seconds East a distance of 6.34 feet to a new iron pin on the bank of Moxley's Branch, thence leaving said branch, South 85 degrees 30 minutes 14 seconds West a distance of 9.17 feet to a new iron pin, thence North 16 degrees 55 minutes 15 seconds West a distance of 69.46 feet to a new iron pin , thence North 6 degrees 23 minutes 10 seconds West a distance of 92.45 feet to a new iron pin,

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thence North 22 degrees 51 minutes 51 seconds West a distance of 130.46 feet to a new iron pin , thence North 37 degrees 01 minutes 43 seconds West a distance of 57.76 feet to a new iron pin, thence North 13 degrees 14 minutes 49 seconds West a distance of 35.28 feet to a new iron pin, thence North 0 degrees 25 minutes 33 seconds East a distance of 48.77 feet to a new iron pin, thence North 10 degrees 23 minutes 27 seconds West a distance of 147.10 feet to a new iron pin, thence North 73 degrees 31 minutes 58 seconds West a distance of 142.61 feet to a new iron pin, thence South 88 degrees 27 minutes 57 seconds West a distance of 309.11 feet to a new iron pin, thence South 79 degrees 47 minutes 42 seconds West a distance of 99.10 feet to a new iron pin, thence North 85 degrees 28 minutes 15 seconds West a distance of 102.83 feet to a new iron pin, thence South 87 degrees 55 minutes 43 seconds West a distance of 55.29 feet to a new iron pin, thence South 81 degrees 35 minutes 54 seconds West a distance of 104.77 feet to a new iron pin, thence South 78 degrees 22 minutes 13 seconds West a distance of 44.15 feet and crossing a twenty foot wide right of way as described in the above noted Fosson deed, to a new iron pin, thence South 77 degrees 50 minutes 59 seconds West a distance of 56.81 feet to an existing fence post, thence North 53 degrees 15 minutes 58 seconds West a distance of 31.77 feet to the point of beginning , containing 1.17 acres, more or less.