

APPENDIX D. CWMTF Deed of Conservation Easement

BOOK **2198** PAGE **256**

This instrument prepared by *[signature]* should be returned to: D. MICHAEL PARKER, P.O. BOX 100
Kimberly M. Grantham, Durham County Attorney's Office, Post Office Box 3508, Durham, North Carolina
27702 HILLSBOROUGH, NC 27278

Durham County Tax Parcel ID

Orange County Tax Parcel ID
0818-13-2024
0807-98-4796 JH

STATE OF NORTH CAROLINA

COUNTY OF DURHAM
and
COUNTY OF ORANGE

FOR REGISTRATION WILLIE L. COVINGTON
REGISTER OF DEEDS
DURHAM COUNTY, NC
2001 MAR 16 11:13:13 AM
BOOK: 3027 PAGE: 194-205 FEE: \$0.00
INSTRUMENT # 2001010092

**CONSERVATION EASEMENT
Little River Regional Park and Natural Area**

31 THIS CONSERVATION EASEMENT ("Conservation Easement") is made on this day of January, 2001, by and between DURHAM COUNTY with an address at 200 East Main Street, Durham, NC 27701, and THE COUNTY OF ORANGE with an address at P.O. Box 8181 Hillsborough NC 27278, ("Grantor") and the STATE OF NORTH CAROLINA, with its address c/o State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321 ("State" or "Grantee"), acting solely through the North Carolina Clean Water Management Trust Fund, with its address at 2313-B Executive Park Circle, Greenville, NC 27834 ("Fund").

RECITALS & CONSERVATION PURPOSES

- A. Grantor owns, in fee simple, the property as follows: approximately 68.1 acres located in Durham County is owned by Grantor Durham County, and approximately 56.57 acres located in Orange County is owned by Grantor County of Orange and being all of the property that is more particularly described in Exhibit A attached hereto and by this reference incorporated herein ("Property"); and
- B. The State of North Carolina will be the Grantee and holder of this Conservation Easement; and,
- C. Fund is authorized by Article 13A, Chapter 113 of the General Statutes of North Carolina ("N.C.G.S.") to finance projects and to acquire land and interests in land, including conservation easements for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses; and
- D. The Grantor has received a grant from the Fund for acquisition of the Property in consideration of which Grantor has agreed that it will be conserved and managed in a manner

that will protect the quality of the waters of the North Fork of the Little River and otherwise promote the public purposes authorized by Article 13A, Chapter 113 of the N.C.G.S; and,

E. The parties hereto recognize the conservation and water quality values of the Property in its present state as a riparian buffer and intend that said conservation values of the Property be preserved and maintained.

F. The characteristics of the Property, its current use and state of improvement are described in Exhibit A, which is the appropriate basis for monitoring compliance with the objectives of preserving the conservation and water quality values; the Exhibit A is not intended to preclude the use of other evidence (e.g. surveys, appraisals) to establish the present condition of the Property if there is a controversy over its use.

NOW, THEREFORE, in consideration of the premises and the mutual benefits recited herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the Grantor hereby unconditionally and irrevocably gives, grants and conveys forever and in perpetuity to the Grantee, its successors and assigns, and the Grantee hereby accepts, a Deed of Conservation Easement of the nature and character and to the extent hereinafter set forth in, over, through and across the Property, together with the right to preserve and protect the conservation values thereof as described in the Recitals herein.

The purposes of this Conservation Easement are to provide environmental protection for surface waters and to protect the wildlife and natural heritage values and it shall be so held, maintained, and used therefore. It is the further purpose of this Easement to prevent any use of the Property that will significantly impair or interfere with the preservation of said conservation values. Grantor intends that this easement will restrict use of the Property to such activities as are consistent with the purposes of conservation.

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 Grantee against Grantor, its representatives, successors, assigns, lessees, agents and licensees.

ARTICLE II. RIGHTS RESERVED TO GRANTOR

Grantor reserves certain rights accruing from ownership of the Property, including the right to engage in or permit others to engage in uses of the Property that are not inconsistent with the purpose(s) of this Easement. All rights reserved by Grantors are reserved for Grantors, their representatives, successors, and assigns, and are considered to be consistent with the conservation purposes of this Conservation Easement. The following rights are expressly reserved:

A. To engage in passive recreational uses of the Property (requiring only incidental alteration of the land and posing no threat to conservation values), including, without limitation, walking, fishing, or animal and plant observation; and,

B. To allow public access to the property for the purpose of conducting educational tours, scientific study, maintenance of the Property and any other purpose consistent with maintaining the conservation value; and

C. To allow limited recreational trails including but not limited to horseback riding and biking, subject to the limitations in Article III below.

Notwithstanding the foregoing, Grantor and Grantee have no right to agree to any activity that would result in the termination of this Conservation Easement.

ARTICLE III. PROHIBITED AND RESTRICTED ACTIVITIES

Any activity on, or use of, the Property inconsistent with the purposes of this Conservation Easement is prohibited. The Property shall be maintained in its natural, scenic, wooded and open condition and restricted from any development or use that would impair or interfere with the conservation purposes of this Conservation Easement set forth above.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited or restricted.

A. Industrial and Commercial Use. Industrial and commercial activities and any right of passage for such purposes are prohibited.

B. Agricultural, Timber Harvesting, Grazing and Horticultural Use. Agricultural, timber harvesting, grazing, horticultural and animal husbandry operations are prohibited.

C. Disturbance of Natural Features, Plants and Animals. There shall be no cutting or removal of trees, or the disturbance of other natural features except for the following: (1) as incidental to boundary marking, fencing, signage, construction and maintenance of nature trails and public access allowed hereunder; (2) manual vegetation removal for the control of non-native plants, (3) selective cutting and prescribed burning or clearing of vegetation and the application of mutually approved pesticides for fire containment and protection, disease control, restoration of hydrology, wetlands enhancement and/or control of non-native plants; subject however, to the prior approval of Fund, (4) hunting and fishing pursuant to applicable rules and regulations, (5) archeological research that disturbs no more than 5000 square feet at any one time, and (6) vegetation management, including mowing, to maintain the existing open areas described in Exhibit A.

D. Construction of Buildings and Recreational Use. There shall be no constructing or placing of any building, mobile home, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier landing, dock or any other temporary or permanent structure or facility on or above the property except as otherwise granted herein. Permitted improvements include fencing and recreational improvements such as, but not limited to, trails, boardwalks, benches, tables and any incidental filling required to produce such. Concrete, asphalt, gravel, or other improved surfaces used for trail construction, access or related purposes is acceptable so long as it does not exceed one (1) percent of the

Property. Any such improvements must also be permitted by state and federal regulations.

E. Signage. Signage is prohibited except for the following: placing and display of no trespassing signs, local, state or federal traffic or similar informational signs, for sale or lease signs, signs identifying the conservation or educational values of the Property, and/or signs identifying the Grantor as owner of the Property and State as holders of this Conservation Easement and as the source of funding for the acquisition of this Property, educational and interpretative signs, identification labels or any other similar temporary or permanent signs, reasonably satisfactory to the Fund.

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 except as necessary for the purpose of combating erosion or incidental to any conservation management activities otherwise permitted in this Conservation Easement.

G. Wetlands and Water Quality. There shall be no pollution or alteration of water bodies and no activities that would be detrimental to water purity or that would alter natural water levels, drainage, sedimentation and/or flow in or over the Property or into any surface waters, or cause soil degradation or erosion nor diking, dredging, alteration, draining, filling or removal of wetlands, except activities to restore natural hydrology or wetlands enhancement as permitted by state and any other appropriate authorities.

H. Dumping. Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, or machinery, or other materials on the Property is prohibited.

I. Conveyance and Subdivision. The Property may not be subdivided, partitioned nor conveyed, except in its current configuration as an entity or block of property.

ARTICLE IV. ENFORCEMENT AND REMEDIES

A. Enforcement. To accomplish the purposes of this Easement, Grantee is allowed to prevent any activity on or use of the Property that is inconsistent with the purposes of this Easement and to require the restoration of such areas or features of the Property that may have been damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by Grantor that comes to the attention of the Grantee, the Grantee shall, except as provided below, notify the Grantor 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 Property 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, including, without limitation, those set forth in the Grant Agreement under which this Conservation Easement was obtained.

B. Inspection. Grantee, its employees and agents and its successors and assigns, have the right, with reasonable notice, to enter the Property at reasonable times for the purpose of inspecting the Property to determine whether the Grantor, Grantor's representatives, or assigns are complying with the terms, conditions and restrictions of this Conservation Easement.

C. Acts Beyond Grantor's Control. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Property 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. Any costs incurred by Grantee in enforcing the terms of this Conservation Easement against Grantor, 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 by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or of any other term of this easement or of Grantee's rights. No delay or omission by Grantee in exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

ARTICLE V. DOCUMENTATION AND TITLE

A. Property Condition. The parties acknowledge that the Property is currently undeveloped land, with no improvements other than as described in Exhibit A and easements and rights of way of record.

B. Title. Grantor Durham County, as to the 68.1 acres of the Property located in Durham County, and Grantor County of Orange, as to the 56.57 acres of the Property located in Orange County, covenants and represents that it is the sole owner and it is seized of the Property in fee simple and has good right to grant and convey the aforesaid

Conservation Easement; that there is legal access to the Property, that the Property is free and clear of any and all encumbrances, except easements of record, none of which would nullify, impair or limit in any way the terms or effect of this Conservation Easement. Grantor Durham County, as to the 68.1 acres of the Property located in Durham County, and Grantor County of Orange, as to the 56.57 acres of the Property located in Orange County, shall defend its title against the claims of all persons whomsoever, and covenants that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement.

ARTICLE VI. MISCELLANEOUS

A. Subsequent Transfers. Grantor hereby covenants and agrees, that in the event it transfers or assigns the Property, the transferee of the Property will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986, as amended, or any successor section, and the regulations promulgated thereunder (the "**Internal Revenue Code**"), which is organized or operated primarily for one of the conservation purposes specified in Section 170 (h)(4)(A) of the Internal Revenue Code. Grantor agrees for itself, its successors and assigns, to notify 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. Grantor, for itself, its 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) Grantee, for itself, its successors and assigns, agrees that this Conservation Easement shall be held exclusively for conservation purposes.

(2) The parties hereto 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 organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code, which is organized or operated primarily for one of the conservation purposes specified in Section 170 (h)(4)(A) of the Internal Revenue Code, and 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 to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance, set forth in the Recitals herein.

(3) Unless otherwise specifically set forth in this Conservation Easement, nothing herein shall convey to or establish for the public a right of access over 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 et. seq. 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. Recording. Grantor shall record this instrument and any amendment hereto in timely fashion in the official records of Durham County, North Carolina and Orange County, North Carolina, and may re-record it at any time as may be required to preserve its rights.

E. Notices. All notices, requests or other communications permitted or required by this Agreement 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. All such items shall be deemed given or made three (3) days after being placed in the United States mail as herein provided. 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 denied unless, within ninety (90) days after receipt of notice, a written notice of approval and the reason therefore has been mailed to the party requesting consent.

F. Amendments. Grantor and Grantee 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) require the written consent of both Grantor and Grantee and shall be effective upon recording in the public records of Durham County, North Carolina and Orange County, North Carolina.

G. Environmental Condition of Property; Responsibility for Damages. The Grantor warrants, represents and covenants to the Grantee that to the best of its knowledge, after appropriate inquiry and investigation, that: (a) the Property described herein is and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations, and (b) as of the date hereof there are no hazardous materials, substances, wastes, or environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in or under the Property or used in connection therewith, and that there is no environmental condition existing on the Property that may prohibit or impede use of the Property for the purposes set forth in the Recitals and the Grantor will not allow such uses or conditions. The Grantor shall be solely responsible for all claims, losses, liabilities, damages, and costs, and expenses suffered as a direct or indirect result of any violation of any federal, state, or local environmental law or regulation or of the use or presence of any hazardous substance, waste or other regulated material in, on, or under the property.

H. 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. The party(ies) hereto

intend this document to be an instrument executed under seal. If any party is an individual, partnership or limited liability company, such party hereby adopts the word "SEAL" following his/her signature and the name of the partnership or limited liability company as his/her/its legal seal. The Recitals set forth above and the Exhibits attached hereto are incorporated herein by reference.

I. Interpretation. This Conservation Easement shall be construed and interpreted under the laws of the State of North Carolina, and any ambiguities herein shall be resolved so as to give maximum effect to the conservation purposes sought to be protected herein.

J. Parties. Every provision of this Conservation Easement that applies to the Grantor or to the Grantee shall likewise apply to their respective heirs, executors, administrators, assigns, and grantees, and all other successors in interest herein.

K. Merger. The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

L. Subsequent Liens. No provisions of this Conservation Easement shall be construed as impairing the ability of Grantor to use this Property for collateral for borrowing purposes, provided that any mortgage or lien arising therefrom shall be subordinated to this Easement.

TO HAVE AND TO HOLD unto THE STATE OF NORTH CAROLINA, its successors and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor, Grantor's representatives, successors and assigns, and shall continue as a servitude running in perpetuity with the Property.

IN WITNESS WHEREOF, Grantor, by authority duly given, has hereunto caused these presents to be executed by its officers and its seal affixed, to be effective the day and year first above written.

GRANTOR:

DURHAM COUNTY

By: Mary Ann E. Black
Mary Ann E. Black
Durham County Chairman of the Board

ATTEST:

Garry E. Umstead
Garry E. Umstead,
Durham County Clerk to the Board of Commissioners



STATE OF NORTH CAROLINA
COUNTY OF Granville

I, a Notary Public of the County and State aforesaid, certify that Garry E. Umstead personally came before me this day and acknowledged that he is Clerk to the Board of Commissioners for Durham County and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by Mary Ann E. Black, the Chairman of the Durham County Board of Commissioners, and attested by him as Clerk to the Board of Commissioners.

Witness my hand and notarial seal, this the 9th day of January, 2001.



S. Harper
Sandra P. Harper

commission expires: April 26, 2004

GRANTOR:

THE COUNTY OF ORANGE

By: John M. Link, Jr.
John M. Link, Jr.
Orange County Manager

ATTEST:

Beverly A. Blythe
Beverly A. Blythe,
Clerk to the Board of Commissioners

[SEAL]

STATE OF NORTH CAROLINA
COUNTY OF Orange

I, a Notary Public of the County and State aforesaid, certify that Beverly A. Blythe personally came before me this day and acknowledged that she is Clerk to the Board of Commissioners for The County of Orange, North Carolina and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by John M. Link, Jr., the County Manager, and attested by her as Clerk to said Board of Commissioners.

Witness my hand and official stamp or seal, this the 31 day of January, 2001.



Evelyn M Cecil
Notary Public

My commission expires: 10-13-2004

STATE OF NORTH CAROLINA
_____ COUNTY

State of North Carolina-Orange County
The foregoing certificate(s) of Sandra P. Harper and Evelyn M. Cecil

The foregoing certificate of _____
certified to be correct.

~~X X X X X~~ (Notaries) Public for the Designated Governmental units ~~X~~ (are) certified to be correct. See filing certificates herein.

This the 13th day of February, D. ~~XX~~ 2001.

Joyce H. Pearson
Register of Deeds By: Russella D. Mize
~~_____~~ / Deputy

FILED
13 FEB 2001, at 02:25:14pm
Book 2198, Page 256 - 266
Joyce H. Pearson
Register of Deeds,
Orange County, N. C.

_____, Notary Public is

certified to be correct.

This _____ day of _____, 2001.

Register of Deeds

EXHIBIT A**Description of Property Condition:**

The conservation easement property consists of 300 foot wide riparian buffers along the North Fork of the Little River and an unnamed perennial stream that bisects the Little River Regional Park. The park site parcels acquired which contain the easement consists of a total of 305.32 acres. The Orange County parcels are Parcel A, which totals 7.61 acres and includes 1.8 acres of conservation easement; and Parcel "B" which consists of 128.14 acres and 54.77 acres within the conservation easement. In Durham County parcel "C" consists of 169.57 acres of which 68.1 acres is contained with the easement property. Durham County parcel D will be acquired in July 2001, and consists of another 85.34 acres of which 6.47 acres will be within the easement property. When all park acquisitions are completed, 131.14 acres of the 390.66-acre park will be within the easement property.

The easement property consists largely of mixed hardwoods and pines. A number of old timber roads cross or run through the easement property; the locations of such roads are shown on the attached survey maps. No other structures or improvements exist within the easement property.

Two locations are without existing tree cover: Within Orange County Parcel "B", approximately 2 acres are in existing meadow that was former agricultural land. On Parcel D approximately one-half acre is in open area created during former logging activities. The boundaries of both open areas are drawn on the attached survey using aerial photographs. Both areas may be retained in their present open condition so long as vegetated cover is maintained.

Legal Description:

Parcel A: The 1.8± acres identified as "IN CONSERVATION EASEMENT" on the plat referred to in the description of Tract 1 in the deed from Triangle Community Foundation, Inc. to County of Orange, North Carolina, which deed is recorded at Book 2157, Page 548 of the Orange County Registry.

Parcel B: The 54.77± acres identified as "IN CONSERVATION EASEMENT" on the plat referred to in the description of Tract 2 in the deed from Triangle Community Foundation, Inc. to County of Orange, North Carolina, which deed is recorded at Book 2157, Page 548 of the Orange County Registry.

Parcel C: The 68.1± acres identified as "IN CONSERVATION EASEMENT" on the plat referred to in description in the deed from Triangle Community Foundation, Inc. to Durham County, North Carolina, which deed is recorded at Book 2943, Page 10 of the Durham County Registry.