

AGENDA
North Carolina Land and Water Fund
Acquisition Committee Meeting
November 13, 2023 | 10:00 a.m. – 12:00 p.m.

This meeting will be held via teleconference and will have a physical location on the 4th floor of the Nature Research Center located at 121 West Jones Street, Raleigh, NC in room 4508. If any member of the public would like to join to the meeting via MS Teams or in person, please contact Terri Murray at teresa.murray@ncdcr.gov or 919-707-9400 in advance for links or directions.

Committee Members:

Amy Grissom (Chair), Greer Cawood, Jason Walser, John Wilson, David Womack

COMMENCEMENT

1) Call to Order (Chair)

a) Welcome

b) Roll call

c) Compliance with General Statute § 138A-15

General Statute § 138A-15 mandates that the Chair inquire as to whether any Trustee knows of any conflict of interest or the appearance of a conflict of interest with respect to matters on the agenda. If any Trustee knows of a conflict of interest or the appearance of a conflict of interest, please state so at this time.

d) Please put cell phones on vibrate or turn off, and if guests are joining remotely, mute your audio and turn off your video unless you are called upon to speak

e) Revisions, additions, and adoption of the agenda

f) Approval of committee meeting minutes from September 19, 2023

2) Executive Director's update (Will Summer)

PUBLIC COMMENTS

The public is invited to make comments to the committee (Chair)

The NCLWF Guidelines and Procedures Manual states that comments shall be limited to subjects of business falling within the jurisdiction of the NCLWF. The NCLWF welcomes public comments on general issues. Comments will not be allowed on individual projects before the NCLWF for funding during the regular meeting. Comments will be limited to three minutes per person.

BUSINESS

1) Program Manager's update (Marissa Hartzler)

Staff will provide the committee with a program update.

2) Donation Mini-Grant program updates (Marissa Hartzler)

Staff will present revisions to the DMG program for the committee's consideration.

3) 2000B-703 Emerald Isle - Emerald Isle Woods Amendment Request (Justin Mercer)

Staff will present a request to amend a conservation easement in Carteret County.

ADJOURNMENT

**North Carolina Land and Water Fund
Acquisition Committee Meeting Minutes
September 19, 2023**

Meeting was held at the Ross Conference Center in the Nature Research Center and all Committee Members in attendance were in-person. Teams link was provided to guest attendees.

Committee Members present: Amy Grissom (Chair), John Wilson, Jason Walser, David Womack

Committee Members not present: Greer Cawood

Additional Board Members present: none

Staff present: Will Summer, Marissa Hartzler, Steve Bevington, Marie Meckman, Christina Benton, Damon Hearne, Justin Mercer, Jill Fusco, Chelsea Blount, Will Price, Zoe Hansen-Burnet, Misty Buchanan, Teresa Murray, Jill Sample

Visitors present: Janice Allen (NCCLT), Charlie Brady (BRC), David Griffin (City of Rocky Mount), Christian Hirni (Orange County), Ben Solomon (NCWRC), Leigh-Ann Hammerbacher (TLC), Emmie Cornell (MCT), Justin Boner (TCF), Bill Holman (TCF), Michelle Mound (TRLC), Robert Covington (TRLC), Jordan Smith (MCT), Clark Harris (UPTS), Guenevere Abernathy (TCF), Will Robinson (TNC), Hervey McIver (TNC), George Norris (NCDPR), Peter Rause (American Rivers), Will Morgan, Jay Leutze (SAHC), John Deem (Winston-Salem Journal)

Call to Order (Amy Grissom, Chair)

Meeting was called to order by Amy Grissom, Chair, at 9:01 am

1. Welcome
2. Roll call
3. Compliance with General Statute § 138A-15
 - a. No conflicts of interest were noted
4. Revisions, Additions and Adoption of the Agenda
 - a. **Motion** to amend agenda to add Executive Director's update was made by John Wilson, seconded by David Womack, and unanimously approved.

Public Comments

No public requests for comment

Executive Director's Update (Will Summer)

Will Summer presented the anticipated funds available to the Acquisition Committee

Business

- 1) **Annual Report and Request to Extend Grant Contracts** (Marissa Hartzler)
 - a. **Motion** to extend contracts for 2021-037 TCF Johnson Farm Hector Creek, 2021-040 TCF Long Bay Piney Island Bombing Range, 2021-051 TNC 421 Sand Ridge Ph 2 through 2025 was made by Jason Walser, seconded by David Womack, and unanimously approved.
- 2) **Review of 2023 Cycle Applications**
 - a. Donated Mini-Grants (Marissa Hartzler)
 - i. **Motion** to recommend up to \$500,000 of the Acquisition Committee funding allocation be available for Donated Mini-Grant projects from September 20, 2023, through the typical funding meeting in 2024. Grants will be awarded via administrative approval delegated to

the NCLWF Board of Trustees Chair, and the awards will be made from provisional funds as needed. The motion was made by David Womack, seconded by Jason Walser, and unanimously approved.

- b. Available Funds (Marissa Hartzler)
 - i. Staff recommended the Acquisition Committee consider approximately \$49.5m in funding, which included \$32,773,047 funds available. The calculation of funds available includes an assumption of no change in recurring funds based on the most recent State Budget drafts.
- c. Review of 2023 Projects (Chelsea Blount, Jill Fusco, Damon Hearne)
 - i. Staff presented projects in score order, ranked projects 1 through 63.
 - ii. Committee members requested review of additional projects, including 2023-051 and 2023-072.
 - iii. One multipart **Motion** was made to recommend:
 - 1. A \$5m cap
 - 2. Contract expiration of May 31, 2024, for 2023-069 TCF Sledge Forest Nature Park
 - 3. Funding the first 30 projects in score order from 2023-075 TLC Kidzu Children's Museum through 2023-043 NCDPR Scheld Tract Lake Norman
 - 4. Moving 2023-072 TCF Worrells Mill to be the 31st project funded
 - 5. Moving three NCDPR projects, including 2023-038 Kotis Tract, 2023-045 Waynick Tract, and 2023-040 Moore Tract, to the first three provisionally funded projects, in that order
 - 6. Funding provisionally projects in score order, from 2023-011 CC Hogback Mountain Ph 2 through 2023-035 NCCLT Smith-Sugg Pocosin
 - 7. Designating \$1m military funds to 2023-037 NCWRC Jordan Timber Tracts Sandhills Game Land.

The motion was made by John Wilson, seconded by David Womack, and unanimously approved.

Adjournment

Motion to adjourn at 5:04pm by Jason Walser, seconded by John Wilson, and unanimously approved.

Action Item**Staff member: Marissa Hartzler**

Agenda Item 2) Revision of Donation Mini-Grant Program Guidelines**Background**

NCLWF has offered a Donated Easement Program since 2003, providing transaction costs to help facilitate donation of conservation easements to nonprofits. The program was later broadened to allow state agencies and local governments and nonprofits alike to accept fee simple donations of land. To date, the program guidelines have not been codified in the NCLWF Guidelines and Procedures Manual.

The original cap of \$25,000 has not been revisited since the inception of the program. Staff have also compiled information from grant applicants and recipients and will summarize recommended changes to the program to the committee.

Staff recommendation

Approve two new guidelines documents for inclusion in the NCLWF Guidelines and Procedures Manual, to reflect prior and new recommended changes to the program and formally document the administrative approval process.

Committee action needed

Provide direction to staff on further revisions and/or make a recommendation to the board.

Attachments: Current Donated Easement Program text, Proposed Donation Mini-Grant Program text for DMG-001 and DMG-002.

Donation Mini-Grant Program Guidelines:

Donation Mini-Grant Program Procedures and Requirements (DMG-001)

Background:

The NCLWF Board of Trustees (Board) first established the Donated Easement Program, now known as the Donation Mini-Grant (DMG) Program, with the goals of facilitating the donation of conservation interests where the landowner or nonprofit grant applicant did not have the funds to cover the transaction costs necessary for accepting the donation. Initially the DMG Program was designed to provide reimbursement transaction and stewardship endowment costs for the purposes of accepting a perpetual conservation easement. The DMG Program was later expanded to provide funds for projects in which the landowner wished to donate the fee simple absolute to nonprofit, local, and state government entities.

Guidelines:

1. Nonprofits, local governments, and state agencies eligible to apply to the DMG Program to accept the donation of a conservation agreement and/or the donation of the fee simple absolute interest.
2. The acquisition of the conservation agreement or fee simple absolute interest must be an absolute donation, and as such, no funds will be reimbursed to the Grant Recipient for acquisition.
3. All property must be restricted with permanent conservation agreements to protect natural or cultural features. Conservation agreements shall grant the State of North Carolina third party rights of enforcement.
4. The total amount eligible for reimbursement is \$50,000 per award.
5. The value of the donation must be greater than the requested funds.
6. The value of the donation, as determined either by appraisal or tax value of the land, may be included as matching funds. The value of structures must be excluded from the appraisal. Appraisals do not require review by the State Property Office. When tax value is used in lieu of appraisal, up to 100% of the value may be claimed for fee donations and 80% of the value may be claimed for conservation easement donations.
7. Appraisals may only be reimbursed if the Grant Recipient is required to have an appraisal and the Grant Recipient can substantiate that there is no deduction being taken for the project. Appraisals to support state or federal tax incentives are not reimbursable.
8. Other reimbursable and match budget items may include:
 - Transaction costs, including survey, boundary marking, baseline documentation report, legal fees, title opinion, commitment and/or policy, ESA, and transaction screen.
 - Administrative costs up to 10% of the total transaction costs, per the requirements of MPP-001.
 - Property management costs that do not exceed \$5,000, per the requirements of ACQ-007.
9. When a land trust nonprofit with a dedicated stewardship endowment will steward and monitor the donation in perpetuity, the Grant Applicant may request up to 50% of stewardship endowment funds.

Donation Mini-Grant Program Guidelines:

Donation Mini-Grant Program Administrative Approval (DMG-002)

Background:

Since September 2014, the Donation Mini-Grant (DMG) Program has operated using an administrative approval system, in which the Board delegated approval authority to the Board Chair to expedite donations outside of the standard grant cycle. Administrative approval was reaffirmed as part of the DMG funding motion approved at the September 20, 2023, meeting of the Board.

Guidelines:

1. Authority to approve DMG Program awards is delegated to the Board Chair. Applications will be considered on a schedule set by NCLWF staff based on annual demand. The date of approval by the Board Chair will be the effective Award Date of the grant.
2. Regardless of this delegation, the Board Chair may elect to seek approval of an application from the Acquisition Committee. In these instances, the date of approval by the Acquisition Committee will be the effective Award Date of the grant.
3. The Expiration Date of grants made via Administrative Approval by either the Board Chair or Acquisition Committee shall be no more than 12 months from the Award Date, provided however that NCLWF staff may elect to approve one six-month extension. All other extension requests must be approved by the Board through recommendation made by the Acquisition Committee.



DONATED EASEMENT PROGRAM

Donated Easement Mini-grants Program

Background: The Board of Trustees established the Donated Easement Program to provide up to \$25,000 to pay transaction costs associated with the donation of a permanent conservation easement for the purpose of protecting conservation values. This program was developed to expedite permanent conservation easements and is intended to facilitate a donation in situations where the landowner or a conservation nonprofit or local government does not have funds to cover transaction costs necessary to donate an easement.

Guidelines, forms and requirements are available at nclwf.nc.gov

Effective Date

Versions	Revisions
November 18, 2003	Original Effective Date

Action Item**Staff member:** Justin Mercer

Agenda Item 4) 2000B-703 Emerald Isle – Emerald Isle Woods Amendment Request

The Town of Emerald Isle is requesting an amendment to the approximately 42-acre conservation easement to release three acres to facilitate the construction of a new state-of-the-art Fire/EMS station.

Background

In 2000, the North Carolina Land and Water Fund awarded a grant in the amount of \$2,400,000 to the Town of Emerald Isle and the North Carolina Coastal Federation to acquire property and to design, construct, operate, and maintain a constructed wetlands system to treat stormwater and reduce pollution in the ocean and Bogue Sound. The entirety of NCLWF's \$2,400,000 funding contribution went toward the \$3,460,000 acquisition of the land.

The Town of Emerald Isle has undergone review of their emergency response services in recent years. This review revealed insufficient response times from existing fire and EMS stations to meet the needs of residents and tourists alike. A new station closer to the east side of the island is needed to provide adequate services. The centralized location and road frontage along Coast Guard Road led Town staff to select Emerald Isle Woods their chosen site.

In 2021, the Town established the Emergency Services Task Force and engaged experts from the UNC School of Government, local realty experts, fire service professionals, and outside experts. Despite 18 months of effort, no other suitable location could be identified. The Town of Emerald Isle proposes to offset the impact to the NCLWF conservation easement with the functional protection of an additional nine acres at McLean-Spell Park in addition to monetary compensation for the easement value at Emerald Isle Woods.

Staff Recommendation

Though there is significant public benefit associated with this request, staff cannot recommend approval. The committee should carefully weigh the public benefits associated with the request against the impacts to conservation values.

Committee Action Needed

Approve, amend, or deny the request and make a recommendation to the board.

Attachments: Request packet, original easement, 1st easement amendment, Declaration of Covenants and Restrictions for 2017-022, and Conservation Benefit Analysis Review Sheet



Nice Matters!

Town of Emerald Isle
7500 Emerald Drive
Emerald Isle, NC 28594

252-354-3424 voice
252-354-5068 fax

www.emeraldisle-nc.org

Mayor
Jason Holland

Mayor Pro-Tem
Floyd Messer, Jr.

Board of Commissioners
Jamie Vogel
Steve Finch
Mark Taylor
Jim Normile

Town Manager
Matt Zapp
mzapp@emeraldisle-nc.org



MEMO

TO: Justin Mercer, Stewardship Manager
North Carolina Land and Water Fund

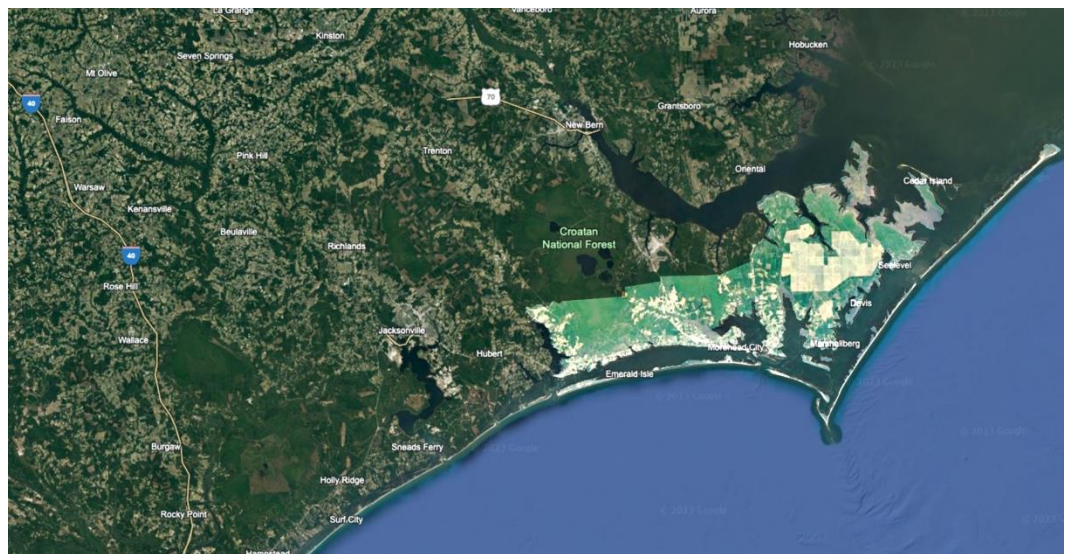
FROM: Matt Zapp, Town Manager

SUBJECT: Town of Emerald Isle Conservation Easement Consideration

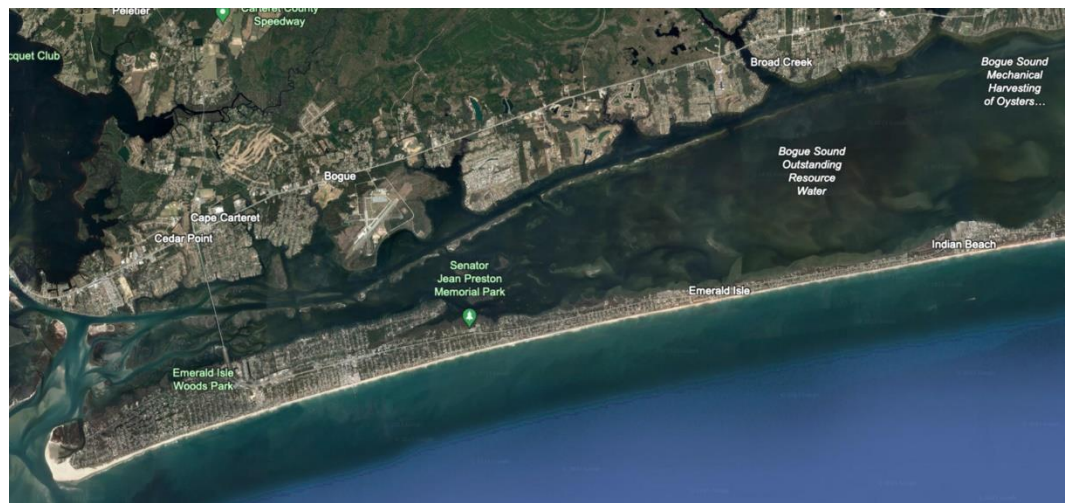
DATE: November 1, 2023

MUNICIPAL OVERVIEW

The Town of Emerald Isle is located in Carteret County North Carolina. Situated on the western end of the Bogue Banks, Emerald Isle proper consists of 5-square miles.



The Town maintains over 12-miles of public beach access and serves some 4,000 residents, a myriad of secondary property owners, and 50,000 daily visitors during the peak summer season. On average, over 4.1 million vehicles travel across the B. Cameron Langston Bridge from the mainland to Emerald Isle.



EMERALD ISLE SERVICES

The town provides Police, Fire, EMS, Ocean Rescue, Public Works, Parks, Planning, and general Administration services.

MARITIME FOREST LOCATIONS

A pair of maritime forest parks are owned and maintained by the local government:

1. Emerald Isle Woods (42 acres)
2. McLean Spell Park (29.7 acres)

EMERALD ISLE FIRE/EMS/OCEAN RESCUE

To meet the growing demands of the permanent and seasonal public, the Emerald Isle Fire Department continues to evolve. Beginning January 2023, the Fire and EMS departments were combined to maximize efficiency.

To properly respond to life and safety emergencies across the 12-mile service territory, construction of a new Emergency Operation Center (Fire, EMS, and Ocean Rescue) is desperately needed.

EMERGENCY SERVICES TASK FORCE

Emerald Isle established an Emergency Services Task Force (ESTF) in 2021. After 18 months of comprehensive investigation, the group determined that the highest and best placement for a new Emergency Operation Center is along Coast Guard Road.

The Emergency Services Task Force further researched every possible location for the new EOC/ fire station. The only location that meets the necessary geographic response criteria is the road frontage at the Emerald Isle Woods.



REQUEST OF THE NORTH CAROLINA LAND AND WATER FUND

Emerald Isle requests an exemption to construct the new emergency center adjacent to Coast Guard Road in Emerald Isle Woods. The Town of Emerald Isle would like to utilize 3-acres of land in the protected space of Emerald Isle Woods to construct the new Fire, EMS, and Ocean Rescue emergency center.



CONSERVATION EXCHANGE

McClean Spell Park consists of 29.7-acres; only 21-acres on the outer edge of this park is protected via a conservation covenant.

In exchange for the 3-acres of disturbed land in Emerald Isle Woods, the Town would further protect an additional 9-acres of maritime forest in McClean Spell Park. If preferred, the Town would consider converting the entire property to a conservation easement protected through a non-profit partner such as the NC Coastal Federation.



MONETARY COMPENSTATION

Emerald Isle is willing to provide repayment to the NCLWF fund, based on your organization's requirements. The tax value of 3-acres in Emerald Isle Woods (*based on the total 42-acre value*) is approximately \$450,000. Based upon NCLWF grant criteria, your organization would be entitled to 69.36% of value or approximately \$312,000. Emerald Isle would be willing to provide payment to the fund, based on your organization's requirements.

STORMWATER REDUCTION IN EMERALD ISLE WOODS

In addition to the plan to build a new Emergency Operation Center/ Fire Station at Emerald Isle Woods, the Town is actively working to reduce the impact of stormwater on the property and increase local water quality.

Currently, the Lands End subdivision annually pumps 272 million gallons of stormwater along Coast Guard Road and into Emerald Isle Woods.

Town staff has secured an \$850,000 FEMA 428 mitigation grant. These funds are dedicated to the design and installation of a Dune Infiltration system in Lands End. The new system will the pumping of 272 million gallons of stormwater into Emerald Isle Woods. Instead, the water will be treated on site via the dune infiltration system.

The \$850,00 project is currently funded by FEMA. A contract has been awarded to Summit Engineering to design the sustainable system, secure CAMA permitting, bid the project, and finally administer its construction. The target completion date is late 2025.

QUESTIONS, IDEAS AND/OR SUGGESTIONS

The Town of Emerald Isle sincerely appreciates your consideration. If the NCLWF trustees have any questions, do not hesitate to contact me via cell phone, text and/or email.

End of Report

N.C. Dept of Administration
Blane Rice
1321 Mail Service Center
Raleigh, NC 27699-1321

Melanie Arthur 11P
Carteret County Register of Deeds
PH Date 10/18/2002 Time 10:20:00
GR 958309 Page 1 of 11

NORTH CAROLINA, CARTERET COUNTY
The foregoing certificate(s) of Notary Public(s) is/are
certified to be correct. This instrument and this certifi-
cate are duly registered at the date and time and in
the Book and Page shown on the first page hereof.

Melanie Arthur, Register of Deeds
By Melanie Arthur
Asst. Deputy, Register of Deeds

CONSERVATION EASEMENT
FROM THE TOWN OF EMERALD ISLE
TO THE
STATE OF NORTH CAROLINA
CLEAN WATER MANAGEMENT TRUST
FUND

BOOK 958 PAGE 309

(11)

Raleigh, NC 27699-1321

Tax Parcel ID # 5383.09-07-9073

Grant No. 2000B-703

STATE OF NORTH CAROLINA

COUNTY OF CARTERET

16-AL

CONSERVATION EASEMENT
Block 44, North, Emerald Isle (Cape Fear Property)

THIS CONSERVATION EASEMENT ("Conservation Easement") is made on this 8th day of May, 2002, by and between the Town of Emerald Isle, a North Carolina municipal corporation, with an address at 7500 Emerald Drive, Emerald Isle, North Carolina ("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 1651 Mail Service Center, Raleigh, NC 27699-1651 ("Fund").

RECITALS & CONSERVATION PURPOSES

A. Grantor is the sole owner in fee simple of the property being approximately 37.5 acres in Carteret County, State of North Carolina and being all of that certain tract as 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 Bogue Sound and the Atlantic Ocean 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 shoreline and intend that said conservation values of the Property be preserved and maintained.

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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 recreational uses of the Property requiring minimal surface alteration of the land as indicated in Grantor's Public Park Plan, and any Grantee approved amendments thereto, said plans being on file with the Grantor's Clerk and on file with the Grantee's main office in Raleigh, North Carolina, so long as related alterations, construction, improvements, maintenance and uses pose no threat to conservation values; and

B. To allow public access to and use of the property for the purpose of a public park with associated recreational activities, including, without limitation, walking, fishing, non-motorized boating, animal/plant observations, conducting educational tours, scientific study, maintenance of the Property and any other purpose consistent with these excepted uses and maintaining the conservation value. To accomplish the above uses, the Grantor may construct paved or unpaved walking trails within the Easement Property. The Grantor may also establish a limited parking area near or adjacent to the access street running through the Property and have trail connections extending from said parking area. In construction of such trails and parking area the Grantor may also include a convenience facility, gazebo and maintenance shed. The total impervious surface area associated with all improvements including, but not limited to, the access road, walking trails, limited parking area(s), convenience facility, gazebo and maintenance shed shall not exceed 5% of the total area of the Easement Property. All future improvements shall be subject to the prior approval of the North Carolina Clean Water Management Trust Fund and to the terms set forth in that certain Memorandum of Understanding entered into between the Town of Emerald Isle and the North Carolina Clean Water Management Trust Fund dated April 29, 2002, incorporated herein by reference, and available for inspection in the offices of the Grantor & Grantee.

C. To improve and use the property for stormwater collection, retention and filtration as part of the Grantor's Stormwater Management Plan, and any Grantee approved amendments thereto, incorporated herein by reference and available for inspection in the offices of the Grantor and Grantee.

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 on the Property.

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

C. Disturbance of Natural Features, Plants and Animals. Except as allowed under Article II, 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 allowed hereunder; (2) 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, and (3) fishing pursuant to applicable rules and regulations.

D. Construction of Buildings and Recreational Use. Except as allowed under Article II, there shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, 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 for the following: placing and display of no trespassing signs, local, state or federal traffic or similar informational signs, for sale or lease signs, fencing, signs identifying the conservation 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

E. Mineral Use, Excavation, Dredging. Except as allowed under Article II, 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.

F. Wetlands and Water Quality. Except as allowed under Article II, 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.

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

H. 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. The Grantor covenants and represents that the Grantor is the sole owner and 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 shall defend its title against the claims of all persons whomsoever, and Grantor 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. State shall record this instrument and any amendment hereto in timely fashion in the official records of Carteret 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 Carteret County, North Carolina.

G. Environmental Condition of Property. 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.

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. Indemnity. The Grantors agree to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless the State from and against all claims, actions, liabilities, damages, fines, penalties, costs and expenses suffered as a direct or indirect result of any violation of any federal, state, or local environmental or land use law or regulation or of the use or presence of any hazardous substance, waste or other regulated material in, on or under the property.

J. 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.

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

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

M. Subsequent Liens. No provisions of this Conservation Easement shall be construed as impairing the ability of Grantors 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:

TOWN OF EMERALD ISLE

By: Frank Rush
Frank Rush, Town Manager

[SEAL]

ATTEST:

Carolyn K. Custy, CMC
Carolyn Custy, Town Clerk

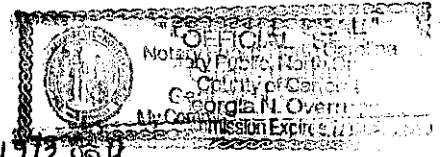
STATE OF NORTH CAROLINA
COUNTY OF CARTERET

I, Georgia N. Overman, Notary Public, do hereby certify that Carolyn Custy personally came before me this day and acknowledged that she is Town Clerk of Emerald Isle, a North Carolina municipal corporation, and that by authority duly given and as the act of the Town, the foregoing instrument was signed in its name by its Town Manager, sealed with its seal, and attested by herself as its Town Clerk.

Witness my hand and notarial seal, this the 27th day of June, 2002.

Georgia N. Overman
Notary Public

My commission expires: 7/1/03



STATE OF NORTH CAROLINA
CARTERET COUNTY

The foregoing certificate of _____, Notary Public, is certified to be correct.

This _____ day of _____, 2002.

Register of Deeds

This instrument prepared by ~~and should be returned to:~~ Taylor & Taylor
Return to Blane Rice, State Property Office, 1321 Mail Service Center, Raleigh, NC
SINGLE CONSERVATION EASEMENT TEMPLATE 2 06/25/02 10:28 AM

BOOK 958 PAGE 309

EXHIBIT A

NORTH CAROLINA

CARTERET COUNTY

EMERALD ISLE TOWNSHIP

Beginning at a point marked by an iron pipe in the northern right-of-way margin of Coast Guard Road said point being the following courses and distances from a P. K. Nail located at the intersection of the centerline of Ocean Oaks Drive and the centerline of the northernmost leg of Cape Fear Loop Road, S 04° 26' 40" E, 1,004.31 feet, N 65° 52' 47" E, 599.30 feet; thence from this point and place of beginning for a first call of N 05° 30' 00" W, 1,393.70 feet to an existing iron pipe in the highwater mark of Bogue Sound and thence along and with the various courses of the highwater mark of Bogue Sound to a point in the highwater mark of Bogue Sound which is N 66° 17' 42" E, 1,158.15 feet from the terminus of the immediately preceding call; thence S 05° 30' 00" E, 131.32 feet to an iron pipe; thence continuing S 05° 30' 00" E, 1,545.65 feet to a point in the northern right-of-way margin of Coast Guard Road; thence with the northern right-of-way margin of that road N 86° 28' 00" W, 184.68 feet to a point in a curve; thence along the curve to the left having a radius of 1,425.19 feet and chord bearing and distance of S 82° 20' 00" W, 553.64 feet to a point; thence continuing with the northern right-of-way margin of Coast Guard Road S 71° 08' 00" W, 374.69 feet to the point and place of beginning. This parcel is all of that property identified as "Block 44 North", containing 37.554 acres by coordinate computation, and as depicted upon that survey for the Town of Emerald Isle dated March 15, 2002, created by Prestige Land Surveying, P.A. of Cape Carteret-Swansboro, North Carolina which is recorded in Map Book 30, page 120, Carteret County Registry and which is referenced herein for a more particular description.

This property is an unimproved tract of raw land bordered on the North by the waters of Bogue Sound, on the South by Coast Guard Road, and on the East and West by significant residential development. The land is covered primarily by natural wetlands, maritime forests, and many types of native vegetation. There is a single, unpaved access road running across the property from Coast Guard Road to a point near the shoreline of Bogue Sound. The topography is varied, ranging from significant sand dunes with sparse vegetation to low lying areas with often dense vegetation. The contour of the land and the permeability of the soils make the property well suited for stormwater collection, retention and natural filtration.

SINGLE CONSERVATION EASEMENT TEMPLATE 2 06/25/02 10:28 AM

BOOK 958 PAGE 309¹⁰

Rt. Taylor

Melanie Arthur 19P
CARTERET COUNTY
JL Date 02/03/2004 Time 16:22:00
GR 1038307 Page 1 of 19

NORTH CAROLINA, CARTERET COUNTY
The foregoing certificate(s) of Notary Public(s) is/are
certified to be correct. This instrument and this certifi-
cate are duly registered, at the date and time and in
the Book and Page shown on the first page hereof.

Melanie Arthur, Register of Deeds
By Paula Lewis
Asst. Deputy, Register of Deeds

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

Parcel #s: 538309051894000 (Ocean Oaks)
538309052868000 (Ocean Oaks)
538310255659000 (Deer Home)
537314432456000 (West End)

CONSERVATION EASEMENT
Emerald Isle, North Carolina

THIS CONSERVATION EASEMENT ("Conservation Easement") is made on this 3rd day of February, 2004, by and between the Town of Emerald Isle, a North Carolina municipal corporation, with an address at 7500 Emerald Drive, Emerald Isle, North Carolina 28594-9320 ("Grantor" or "TOWN") 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 1651 Mail Service Center, Raleigh, NC 27699-1651 ("Fund").

RECITALS & CONSERVATION PURPOSES

A. Grantor is the sole owner in fee simple of four parcels of unimproved land containing approximately 4.18 acres in the aggregate, located in the Town of Emerald Isle, Carteret County, North Carolina and being all of those certain tracts as more particularly described in Exhibit A attached hereto and by this reference incorporated herein ("Property").

B. The State of North Carolina will be the Grantee and Holder of this Conservation Easement.

3 PARCELS - CONSERVATION EASEMENT- FINAL.DOC 02/03/04 3:13 PM

(19)

1

BOOK 1038 PAGE 307

C. Grantor has agreed to set aside some of its rights to use and develop the Property for the purpose of creating a Conservation Easement to preserve, enhance, restore, and maintain the natural features and resources of the Property, to provide habitat for native plants and animals, to improve and maintain water quality, and to control storm water and sediment runoff (hereinafter the "Conservation Values").

D. Grantor and Grantee recognize that the Property is comprised of dry land and wetlands which are a part of the natural systems that filter storm water runoff ultimately flowing to the protected waters of Bogue Sound and the Atlantic Ocean, and is further deemed by the State to qualify as land that addresses the cleanup and prevention of pollution of the State's surface waters. Moreover, Grantor and Grantee recognize that the Property has other Conservation Values including fish and wildlife conservation, open space and scenic values.

E. The Clean Water Management Trust Fund ("Fund") is an agency of the State of North Carolina and is authorized by Article 13A, Chapter 113 of the North Carolina General Statutes to finance projects and to acquire land and interests in land, including conservation easements for riparian buffers for the purpose of providing environmental protection for surface waters and urban drinking water supplies.

F. CWMTF previously provided a grant (#2000B-703; Emerald Isle) to the Town for the acquisition of a certain 43 acre tract of land located between the waters of Bogue Sound and Coast Guard Road in Emerald Isle, North Carolina, said tract being more particularly described in Exhibit C attached hereto and incorporated herein by reference ("Emerald Isle Woods").

G. The Town granted to the State of North Carolina, through CWMTF, a Conservation Easement on Emerald Isle Woods (recorded in Book 958, Page 309, Carteret County, North Carolina Registry).

H. The State of North Carolina has agreed to release from the current Emerald Isle Woods conservation easement, a 1.1 acre, non-waterfront portion of the total 43 acre tract, said portion being described in Exhibit D attached hereto and incorporated by reference. This release is in return for the Town placing the Property described in Exhibit A under this new Conservation Agreement.

I. Grantor has agreed that the Property will be conserved and managed in a manner that will protect the quality of waters of Bogue Sound and the Atlantic Ocean, and otherwise promote the public purposes authorized by Article 13A, Chapter 113 of the N.C.G.S.

J. Grantor, State and Fund (collectively referred to herein as the "Parties") intend that the conservation and water quality values of the Property in its present state will be preserved and maintained according to those purposes set forth herein.

K. The Parties acknowledge that the characteristics of the Property, its current use and state of improvement are described in Exhibit B, which is the appropriate basis for monitoring compliance with the objectives of preserving the conservation and water quality values. The Exhibit B 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 Conservation 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 Conservation Easement will restrict use of the Property to such activities as are consistent with the purposes of conservation.

ARTICLE I. DURATION OF THIS CONSERVATION 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 Conservation 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. Ocean Oaks Subdivision, Parcels 1 & 2

1. Prior Easements. The two Ocean Oaks subdivision parcels have a below ground potable water well and above ground water pump station located upon them. Grantor intends that this well site will remain on the site as a source of water to the residents of Emerald Isle supplied by Bogue Banks Water Company, its successors and/or assigns. An easement on, over, under and across this property has been granted to Bogue Banks Water Company "to use that certain deep well and the aquifer thereunder, known as Bogue Banks Water Well Number 5 ... as a source to draw potable water for (the water company's) water system" and to "maintain, repair, operate, rebuild, and reinstall the well and appurtenant water lines and to install, maintain, and repair pumps, generators and other equipment necessary to pump potable water into (the water company's) water system." The easement also grants the water company "vehicle and pedestrian access over the (two lots) for the purposes of ingress, egress, and regress to Well Number 5 and its appurtenances." These easements and uses will continue, even if such are contrary to other language contained herein.

2. Restrictive Covenants. The two Ocean Oaks parcels are part of a subdivision that is subject to certain restrictive covenants dated June 21, 1984, and recorded in Book 500, Page 203, in the office of the Register of Deeds of Carteret County, North Carolina.

3. Playground. The two Ocean Oaks parcels have a municipal playground and picnic area located upon them and the Grantor intends to continue such use after placing this property under this Conservation Agreement.

4. Passive Recreational Use. Grantor reserves the right to engage and to permit others to engage in passive recreational uses of the parcels, requiring no significant surface alteration of the land which is not otherwise provided for herein, so long as related alterations, construction, improvements, maintenance, activities and uses pose no threat to the conservation values of the Property.

5. Public Use and Access. Grantor reserves the right to allow public access and use of these two parcels for the purpose of an expanded public park facility with associated recreational activities, including picnicking and any other purposes consistent with these accepted uses and maintaining conservation values. To accomplish the above uses, the Grantor may construct a parking area, landscape screening, and utility improvements if the Grantor decides that such improvements are called for.

6. Mowing and Landscaping Superintendents. Grantor reserves the right to maintain the existing lawn and landscaping design of these two parcels as long as proper management practices are implemented in order to preserve and protect the water quality of Bogue Sound and the Atlantic Ocean. Grantor reserves the right to perform all activities necessary to limit erosion, reduce runoff, filtrate sediment, and reduce mowing while minimizing risk to these parcels and the environment. Areas subject to periodic mowing or clearing for purposes of maintenance, inspection or repair of all improvements shall be maintained at the minimum level consistent with applicable regulatory requirements.

7. Storm Water Management. Grantor reserves the right to improve and use the two Ocean Oaks parcels for storm water collection, retention and filtration as part of the Grantor's storm water management plans and programs as they may be formulated from time to time.

B. Deer Horn Dunes Subdivision – Parcel 3.

1. Restrictive Covenants. The Deer Home Dunes parcel is part of a subdivision that is subject to certain restrictive covenants dated August 5, 1977, and recorded in Book 401, Page 468, in the office of the Register of Deeds of Carteret County, North Carolina.

2. Passive Recreational Use. Grantor reserves the right to engage and to permit others to engage in passive recreational uses of the parcels, requiring no significant surface alteration of the land which is not otherwise provided for herein, so long as related alterations, construction,

improvements, maintenance, activities and uses pose no threat to the conservation values of the Property.

3. Public Use and Access. Grantor reserves the right to allow public access and use of this parcels for the purpose of a public park with associated recreational activities, including, without limitation, animal/plant observation, picnicking, playground and any other purposes consistent with accepted uses that maintain conservation values. To accomplish the above uses, the Grantor may construct a parking area, landscape screening, and utility improvements if the Grantor decides that such improvements are called for.

4. Mowing and Landscaping Superintendents. Grantor reserves the right to maintain the existing lawn and landscaping design of this parcel as long as proper management practices are implemented in order to preserve and protect the water quality of Bogue Sound and the Atlantic Ocean. Grantor reserves the right to perform all activities necessary to limit erosion, reduce runoff, filtrate sediment, and reduce mowing while minimizing risk to this parcel and the environment. Areas subject to periodic mowing or clearing for purposes of maintenance, inspection or repair of all improvements shall be maintained at the minimum level consistent with applicable regulatory requirements.

5. Storm Water Management. Grantor reserves the right to clear some portion of, improve and use this parcel for storm water collection, retention and filtration as part of the Grantor's storm water management plans and programs as they may be formulated from time to time. Such storm water programs may include, without limitation, creation of storm water ponds and new wetlands, construction and location of pumps, construction of upland forebays, ditching, piping, and other similar uses.

C. West End Subdivision – Parcel 4.

1. Passive Recreational Use. Grantor reserves the right to engage and to permit others to engage in passive recreational uses of this parcel, requiring no significant surface alteration of the land which is not otherwise provided for herein. Any related alterations, construction, improvements, maintenance, activities and uses shall pose no threat to the conservation values of the parcel.

2. Public Use and Access. Grantor reserves the right to allow public access and use of this parcel for the purpose of a public park with associated recreational activities, including, without limitation, conducting educational tours, scientific study, animal/plant observation, walking, biking, fishing, picnicking and any other purposes consistent with these accepted uses and maintaining conservation values. To accomplish the above uses, the Grantor may construct a greenway trail, an observation/viewing platform, a pedestrian footbridge crossing, access road and parking area, landscape screening, and utility improvements if the Grantor decides that such improvements are called for.

3. Improvements. Grantor reserves the right to make the following improvements upon this parcel if it deems such improvements to be prudent for use of the parcel as a public park.

- a. Greenway Trails. Construct and maintain a paved or unpaved greenway on the Property. The greenway trail must be located at a minimum distance of fifteen (15) feet from the top of the bank of any wetlands, unless such locations are physically impracticable. In the construction of the greenway, and when required by the terrain, boardwalks, ramps, handrails, and steps are to be used and permitted. The Grantor may also construct and maintain park benches, litter receptacles, and trail/feature signs along the greenway trails.
- b. Observation/Viewing Platform. Grantor reserves the right to construct, maintain, and repair one (1) observation/viewing platform with optional bench seating, handrails, connecting steps, and ramp as required by the terrain to be located on the bank of the wetlands provided said platform is connected to the greenway permitted herein.
- c. Pedestrian Foot Bridge. Grantor reserves the right to construct, maintain, and repair one Pedestrian Foot Bridge to be constructed five (5) to ten (10) feet in width in compliance with the American Association of State Highway and Transportation Officials ("AAASHTO") across wetlands, provided said bridge is connected to the greenway trail permitted herein.
4. Mowing and Landscaping Superintendents. Grantor reserves the right to maintain the existing landscaping design, if any, of this parcel as long as proper management practices are implemented in order to preserve and protect the water quality of Bogue Sound and the Atlantic Ocean. Grantor reserves the right to perform all activities necessary to limit erosion, reduce runoff, filtrate sediment, and reduce mowing while minimizing risk to the parcel and the environment. Areas subject to periodic mowing or clearing for purposes of maintenance, inspection or repair of all improvements shall be maintained at the minimum level consistent with applicable regulatory requirements. Outside of such areas, the Grantor shall take steps as appropriate to encourage and promote natural forest and vegetative succession. In order to accomplish these actions, Grantor agrees to implement Best Management Practices, as provided by the Land Quality Section, Division of Land Resources, North Carolina Department of Environment and Natural Resource.
5. Habitat Areas. Grantor reserves the right to maintain this parcel for the purpose of providing habitat diversity for wildlife species. This maintenance may include the planting of various grasses, forbs, and herbaceous vegetation and/or mowing and the use of selective chemicals to impede succession to woody vegetation.
6. Natural Community Restoration. Grantor reserves the right to perform all activities necessary to restore the natural plant and animal communities on the parcel.
7. Storm Water Management. Grantor reserves the right to improve and use this parcel for storm water collection, retention and filtration as part of the Grantor's storm water management plans and programs as they may be formulated from time to time. Such storm

water programs may include, without limitation, creation of storm water ponds and new wetlands, construction and location of pumps, construction of upland forebays, ditching, piping, and other similar uses.

D. Applicable To All Parcels

1. Encroachment for Existing and New Utilities. The Parties acknowledge that the Grantor may in the future be required to construct, maintain and repair new and existing utility improvements within the Property subject to this Conservation Easement. The Grantor agrees that such construction area may be conducted and minimized. All such improvements and uses shall minimize adverse impacts upon the Conservation Values of the Property and shall otherwise be subject to all regulatory requirements and approvals.
2. Parking. Grantor reserves the right to construct a parking areas located in a manner that does not materially diminish the wooded, open space character, and scenic and natural qualities of the Property as compared to those conditions existing on the date of this Conservation Easement. The parking area shall be for the use by the Parties' representatives and by visitors who come to the Property for passive recreational or management purposes
3. Maintenance & Improvements. Except as otherwise provided herein, the Grantor shall have the right and duty to maintain the Property in a clean, natural and undisturbed state and shall remain the fee owner of the Property for purposes of applicable land use regulations, and other applicable laws and ordinances. The total impervious surface areas associated with all aforesaid improvements, excluding any current improvements already upon the Ocean Oaks parcels, shall not exceed ten percent (10%) of the total area of the Property. The Parties 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.

Except for those rights specifically reserved to Grantor in Article II, and 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 on the Property.

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

C. Disturbance of Natural Features, Plants and Animals. Except as allowed under Article II, 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) 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; and (3) animal control to the extent necessary to keep the animal population within numbers consistent with the ecological balance of the area and as pursuant to federal, state and local rules and regulations; and (4) fishing pursuant to applicable federal, state and local rules and regulations.

D. Construction of Buildings and Recreational Use. Except as allowed under Article II, there shall be no constructing or placing of any building, mobile home, asphalt or concrete pavement, 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 for the following: placing and display of no trespassing signs, local, state or federal traffic or similar informational signs, for sale or lease signs, fencing, signs identifying the conservation values of the Property, and/or signs identifying the Grantor as fee simple owner of the Property, and State as holders of this Conservation Easement and the Fund as a source of funding for the acquisition of the Property, educational and interpretative signs, identification labels or any other similar temporary or permanent signs, reasonably satisfactory to the Fund.

E. Mineral Use, Excavation, Dredging. Except as allowed under Article II, 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, controlling storm water runoff, or incidental to any conservation management activities otherwise permitted in this Conservation Easement.

F. Wetlands and Water Quality. Except as allowed under Article II, 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

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

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

ARTICLE IV. ENFORCEMENT AND REMEDIES

A. Enforcement. To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation 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. Right of Entry and 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. Changed Conditions. The grant or donation of this Conservation Easement gives rise to a property right immediately vested in Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole. That proportionate value of Grantee's property rights shall remain constant. If a change in conditions occurs, which makes impossible or impractical any continued protection of the Property for conservation purposes, the restrictions contained herein may only be extinguished by judicial proceeding.

D. Condemnation. Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate or other authority, or by negotiated sale in lieu of condemnation, so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor shall immediately give notice to Grantee, State and the Fund, and shall take all appropriate actions at the time of such taking or sale to recover the full value of the taking and all incidental or direct damages resulting from the taking, which any proceeds recovered in such actions shall be divided in accordance with the proportionate value of Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority. The Grantee, its successors and assigns, shall be entitled

to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the proportionate value that Grantees', its successors' and assigns' interest in the Property bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Conservation Area, or any damages otherwise awarded as a result of judicial proceeding, *minus* the Grantor's expenses from such transaction or proceeding. . Grantee, its successors and assigns, shall use its share of the proceeds of sale in a manner consistent with the conservation purposes set forth herein.

E. 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.

F. 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.

G. No Waiver. Enforcement of this Conservation 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 Conservation 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 B and easements and rights of way of record.

B. Title. The Grantor covenants and represents that the Grantor is the sole owner and 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 shall defend its title against the claims of all persons whomsoever, and Grantor 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 of the Fee Simple Estate. 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. Furthermore, Grantor agrees for itself, its successors and assigns, that in the event it transfers the Property, or any portion thereof, to continue to provide the right of entry over and across the Property for the purposes of monitoring and observation.

B. Conservation Purpose and Subsequent Transfer of the Conservation Easement.

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. The Parties recognize and agree that the Property is open for public entry and use, and shall be open to entry and use equally by all persons, regardless of race, color, creed, national origin, or residence, subject to reasonable published and posted rules governing use of the Property by the Grantor, as approved by the Fund, and consistent with the conservation purposes provided by this Conservation Easement.

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. State shall record this instrument and any amendment hereto in timely fashion in the official records of Carteret 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

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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 Carteret County, North Carolina.

G. Environmental Condition of Property. 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.

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 intends 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. Indemnity. The Grantors agree to the fullest extent permitted by law, to defend, protect, indemnify and hold harmless the State from and against all claims, actions, liabilities, damages, fines, penalties, costs and expenses suffered as a direct or indirect result of any violation of any federal, state, or local environmental or land use law or regulation or of the use or presence of any hazardous substance, waste or other regulated material in, on or under the Property.

J. 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.

K. Parties. Every provision of this Conservation Easement that applies to the Grantors or to the Grantee shall likewise apply to their respective representatives, successors, assigns, and grantees, and all other successors in interest herein.

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

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

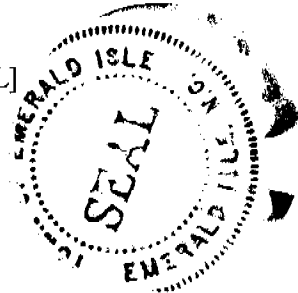
[REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK. SIGNATURE PAGE TO FOLLOW]

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: TOWN OF EMERALD ISLE

[TOWN SEAL]

By: Frank Rush 2/3/04
Frank Rush – Town Manager

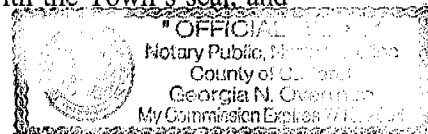


ATTEST:

By: Rhonda Ferebee
Rhonda Ferebee – Town Clerk

STATE OF NORTH CAROLINA
COUNTY OF CARTERET

I, Georgia M. Overman, Notary Public of Carteret County do hereby certify that Rhonda Ferebee, personally came before me this day and acknowledged that she is the Town Clerk of the Town of Emerald Isle, and that by authority duly given and as the act of the Town of Emerald Isle, the foregoing instrument was signed in its name by its town Manager sealed with the Town's seal, and attested by herself as the Town Clerk.



Witness my hand and notarial seal, this 3rd day February, 2004.

My commission expires 7/1/2004 Notary Public: Georgia M. Overman

This instrument prepared for Clean Water Management Trust Fund. (Attn: Lana Armstrong) by Taylor & Taylor. The original recorded document should be returned to Taylor & Taylor, P M. Drawer 3627, Morehead City, NC 28557.

EXHIBIT A

The "Property"

Tract I (Water Company Property, Ocean Oaks Subdivision – Parcels 1&2)

In the State of North Carolina, Carteret County, Emerald Isle, being all of Lot Number Twenty-eight (28) and Twenty-nine (29), Section "E," as shown and designated on a map entitled "Ocean Oaks," being the southern portion of Block Number Forty-Five (45), prepared by J. P. McLean, R.L.S., dated April 4, 1984, revised June 12, 1984, and recorded in Map Book 21, at Page 36, in the office of the Register of Deeds of Carteret County, North Carolina and to which plat reference is made for a more particular description. Together with the right of ingress, egress, and regress as provided by that deed recorded in Book 1038, Page 45, Carteret County Registry.

Tract II (Fulcher Property, Deer Horn Dunes Subdivision- Parcel 3)

In the State of North Carolina, Carteret County, Emerald Isle, being all of Lot Number Twelve (12), Section "C", as shown and designated on a map entitled "Deer Horn Dunes, Emerald Isle, N. C.", prepared by McLean-Johnson Engineers, Cape Carteret, North Carolina, dated July 20, 1977, and recorded in Map Book 14, Page 93, in the office of the Register of Deeds of Carteret County, North Carolina.

Tract III (Cook Property, West End Subdivision – Parcel 4)

In the State of North Carolina, County of Carteret, Town of Emerald Isle, White Oak Township, commencing at a monument (NCGS "Westport" GPS coordinates N=101227.424 meters, E=784790.552 meters, scale factor 0.9999278) thence South 33 degrees 15 minutes 03 seconds East for a distance of 1790.625 feet to a point which is the centerline intersection of Coast Guard Road and Wyndward Court; thence South 85 degrees 57 minutes 44 seconds East for a distance of 53.89 feet to a point on the southern right-of-way margin of Coast Guard Road, said point being the POINT AND PLACE OF BEGINNING; thence for a first call along the southern right-of-way of Coast Guard Road and along a curve to the right having a radius of 2010.09 feet and an arc length of 216.47 feet, being subtended by a chord of North 63 degrees 24 minutes 07 seconds East for a distance of 216.36 feet to a point; thence with the southern right-of-way of Coast Guard Road, North 66 degrees 29 minutes 13 seconds East for a distance of 149.94 feet to an iron stake, the northwest corner of lot 105 of the Wyndtree II Subdivision as shown on that map recorded in Map Book 25, page 19, Carteret County Registry; thence leaving the southern right-of-way of Coast Guard Road and running with the western property line of lot 105, South 12 degrees 23 minutes 24 seconds East for a distance of 84.88 feet to an iron stake; thence continuing with the property line of lot 105, South 73 degrees 38 minutes 44 seconds East for a distance of 26.67 feet to an iron stake; thence South 15 degrees 34 minutes 16 seconds East for a distance of 29.88 feet to an iron stake; thence South 70 degrees 14 minutes 55 seconds East for a distance of 36.33 feet to an iron stake; thence North 79 degrees 11 minutes 15 seconds East for a distance of 44.32 feet to an iron stake, the southeast corner of lot 105; thence with

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the southern property line of lot 106 of the same subdivision, South 81 degrees 43 minutes 40 seconds East for a distance of 79.45 feet to an iron stake, the southeast corner of lot 106; thence with the southern property line of lot 107 of the same subdivision, North 89 degrees 48 minutes 01 seconds East for a distance of 77.14 feet to an iron stake, the southeastern corner of lot 107; thence, with the southern property line of lot 108 of the same subdivision, South 63 degrees 13 minutes 04 seconds East for a distance of 98.45 feet to an iron stake, the southeast corner of lot 108 which is located on the western boundary of Point Emerald Villas; thence with the west property line of Point Emerald Villas, South 12 degrees 10 minutes 23 seconds East for a distance of 201.95 feet to an iron stake, the northeast corner of lot 98 of the Wyndtree II Subdivision; thence leaving the Point Emerald Villas boundary line and with the northern property line of lot 98 of the Wyndtree II Subdivision, South 86 degrees 53 minutes 51 seconds West for a distance of 145.06 feet to an iron stake; thence with the northern property line of lot 99 of the same subdivision, South 86 degrees 40 minutes 14 seconds West for a distance of 74.96 feet to an iron stake; thence with the northern property line of lot 99, North 63 degrees 23 minutes 55 seconds West for a distance of 30.94 feet to an iron stake, the northwest corner of lot 99; thence with the northern property line of lot 100, North 66 degrees 18 minutes 14 seconds West for a distance of 67.78 feet to an iron stake, the northwest corner of lot 100; thence with the northeastern property line of lot 101, North 68 degrees 00 minutes 50 seconds West for a distance of 70.25 feet to an iron stake, the northwest corner of lot 101; thence with the northeastern property line of lot 102, North 43 degrees 47 minutes 08 seconds West for a distance of 44.65 feet to an iron stake, the northwest corner of lot 102; thence with the northeastern property line of lot 103, North 43 degrees 11 minutes 09 seconds West for a distance of 81.01 feet to an iron stake, the northwest corner of lot 103; thence with the northeastern property line of lot 104, North 43 degrees 11 minutes 09 seconds West for a distance of 60.00 feet to a point, the northwest corner of lot 104; thence with the northern property line of lot 104, South 62 degrees 39 minutes 11 seconds West for a distance of 209.31 feet to an iron stake, the northwest corner of lot 104 which is located on the eastern right-of-way margin of Wyndward Court; thence with the eastern right-of-way margin of Wyndward Court along a curve to the right having a radius of 576.26 feet and an arc length of 82.24 feet, being subtended by a chord of North 34 degrees 27 minutes 43 seconds West for a distance of 81.82 feet to a point; thence with the eastern right-of-way margin of Wyndward Court, North 30 degrees 43 minutes 51 seconds West for a distance of 31.48 feet to a point; thence along a curve to the right having a radius of 25.00 feet and an arc length of 33.51 feet, being subtended by a chord of North 06 degrees 31 minutes 19 seconds East for a distance of 30.98 feet to the POINT AND PLACE OF BEGINNING, containing approximately 3.32 acres. All coordinates are based upon grid north. The above description is platted upon a currently unrecorded survey map dated December 18, 2003, entitled "Wetland & Boundary Survey For Town of Emerald Isle, Portion of Wyndtree II" prepared by Brent A. Lanier, PLS, of Lanier Surveying Company of 145 Cedar Point Blvd., Cedar Point, NC, said map being referenced here for more particular description.

EXHIBIT B

Characteristics of the Property to include its current use, state of improvements, water quality sensitive species, including rare and endangered species.

Tract I: (Ocean Oaks, Water Company Property – Parcels 1 & 2) These two parcels are located within a platted residential subdivision located within the Town of Emerald Isle. The parcels have a below ground potable water well and above ground water pump station located upon them. This well site will remain on the site as a source of water to the residents of Emerald Isle supplied by Bogue Banks Water Company, its successors and/or assigns. The water company's deed to the Town for these parcels contains a reserved easement on, over, under and across this property has been granted to Bogue Banks Water Company "to use that certain deep well and the aquifer thereunder, known as Bogue Banks Water Well Number 5 ... as a source to draw potable water for (the water company's) water system" and to "maintain, repair, operate, rebuild, and reinstall the well and appurtenant water lines and to install, maintain, and repair pumps, generators and other equipment necessary to pump potable water into (the water company's) water system." The easement also grants the water company "vehicle and pedestrian access over the (two lots) for the purposes of ingress, egress, and regress to Well Number 5 and its appurtenances." These easements and uses will continue, even if such are contrary to other language contained herein. The Ocean Oaks subdivision lots are restricted to residential use and other covenants dated June 21, 1984, and recorded in Book 500, Page 203, in the office of the Register of Deeds of Carteret County, North Carolina. There is a small community playground with a swing set and picnic area located upon these parcels. The well and playground are surrounded by an open grassed lawn area with some native vegetation interspersed.

Tract II: (Deer Horn Dunes – Parcel 3) This parcel is an undeveloped, wooded lot located in the Deer Horn Dunes subdivision. Subdivision lots are restricted to residential use and other covenants dated August 5, 1977, and recorded in Book 401, Page 468, in the office of the Register of Deeds of Carteret County, North Carolina. The lot contains many native species and serves as habitat for some local wildlife.

Tract III: (West End Subdivision – Parcel 4) This parcel is not a part of the West End Subdivision residential area and is therefore not restricted by that development's covenants. The lot is about 3.2 acres in size and is made up primarily of natural wetlands (about 2.3 acres). This parcel is an important part of the natural drainage process of the western end of Emerald Isle and the town intends to enhance such capabilities. The dry land areas are unimproved. There is direct access to the parcel from Coast Guard road but there is no property adjacent to the road which are suitable for parking or access. The land is covered in native vegetation and serves as habitat to local and migratory wildlife. This property was deeded to the Town with a restriction that the property be used for conservation purposes and a reversion clause should such purposes cease.

EXHIBIT C
(Emerald Woods)

NORTH CAROLINA

CARTERET COUNTY

EMERALD ISLE TOWNSHIP

Beginning at a point marked by an iron pipe in the northern right-of-way margin of Coast Guard Road said point being the following courses and distances from a P. K. Nail located at the intersection of the centerline of Ocean Oaks Drive and the centerline of the northernmost leg of Cape Fear Loop Road, S 04° 26' 40" E, 1,004.31 feet, N 65° 52' 47" E, 599.30 feet; thence from this point and place of beginning for a first call of N 05° 30' 00" W, 1,393.70 feet to an existing iron pipe in the highwater mark of Bogue Sound and thence along and with the various courses of the highwater mark of Bogue Sound to a point in the highwater mark of Bogue Sound which is N 66° 17' 42" E, 1,158.15 feet from the terminus of the immediately preceding call; thence S 05° 30' 00" E, 131.32 feet to an iron pipe; thence continuing S 05° 30' 00" E, 1,545.65 feet to a point in the northern right-of-way margin of Coast Guard Road; thence with the northern right-of-way margin of that road N 86° 28' 00" W, 184.68 feet to a point in a curve; thence along the curve to the left having a radius of 1,425.19 feet and chord bearing and distance of S 82° 20' 00" W, 553.64 feet to a point; thence continuing with the northern right-of-way margin of Coast Guard Road S 71° 08' 00" W, 374.69 feet to the point and place of beginning. This parcel is all of that property identified as Block 44 North, containing 37.554 acres by coordinate computation, and as depicted upon that survey for the Town of Emerald Isle dated March 15, 2002, created by Prestige Land Surveying, P.A. of Cape Carteret-Swansboro, North Carolina.

EXHIBIT D
(Portion of Emerald Woods To Be Released)

A portion of that property conveyed to the Town of Emerald Isle by Cape Fear Company, Limited Partnership by deed recorded in Deed Book 940, Page 654, Carteret County Registry and being more particularly described as beginning at an iron pipe in the northern right of way margin of Coast Guard Road, said pipe being located N 70° 44' 51" E, 1330.34 feet from a mag nail set in the south edge of asphalt of Coast Guard Road which is located +/- 17 feet west of the centerline of Ocean Oaks Drive; and thence from this place of beginning for a first call of N 05° 30' 00" W, 188.72 feet to an iron pipe; thence S 86° 28' 00" E, 330.00 feet to an iron pipe; thence S 05° 30' 00" E, 150.00 feet to an iron pipe; thence 25 feet from and parallel with Coast Guard Road, N 86° 28' 00" W, 130.08 feet to an iron pipe; thence along a curve to the left having a radius of 1450.19 feet and an arc length of 168.39 feet, being subtended by a chord of N 89° E 47' 35" W for a distance of 168.29 feet to an iron pipe; thence S 05° 30' 00" E, 25.02 feet to an iron pipe in the northern right of way margin of Coast Guard Road; thence along the northern right of way margin and along a curve to the left having a radius of 1425.19 feet and an arc length of 30.00 feet, being subtended by a chord of S 86° 19' 10" W for a distance of 30 feet to the point and place of beginning.

FOR REGISTRATION REGISTER OF DEEDS
Karen S. Hardesty
Carteret County, NC
May 14, 2018 02:51:51 PM
TRAVIS DECL 9 P
FEE: \$26.00
FILE # 1608070



FILE # 1608070

DECLARATION OF COVENANTS AND RESTRICTIONS

Prepared by: R Stanley

After Recording Return to:

NORTH CAROLINA

Tax Parcel No. 539417202713000

Carteret COUNTY

CWMTF No. 2017-022

THIS DECLARATION OF COVENANTS AND RESTRICTIONS ("Restrictive Covenants") made on this 11th day of May, 2018, by the Town of Emerald Isle, a North Carolina body politic, with an address of 7500 Emerald Drive, Emerald Isle, NC 28594; ("Declarant")

RECITALS & CONSERVATION PURPOSES

WHEREAS. Declarant is the sole owner in fee simple of that certain real property containing a total of approximately 29.7 acres, more or less, described as the "Surfside Realty Tract", being a parcel of land located between Sound Drive and Emerald Drive in Emerald Isle, White Oak Township, Carteret County, North Carolina with N.C. tax PIN-539417202713 (collectively hereinafter the "**Property**"); and

WHEREAS, the **NORTH CAROLINA CLEAN WATER MANAGEMENT TRUST FUND**, a division of the North Carolina Department of Natural and Cultural Resources with an address at 1651 Mail Service Center, Raleigh, North Carolina 27699-1651 ("**Fund**") is authorized by Chapter 143B, Article 2, Part 41 of the General Statutes of North Carolina ("**N.C.G.S.**") to acquire land and interest in land:

- 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

- for the purpose of protecting and conserving surface waters and enhancing drinking water supplies, including the development of water supply reservoirs; and
- to provide buffers around military bases to protect the military mission; and
- that represents the ecological diversity of North Carolina, including natural features such as riverine, montane, coastal, and geologic systems and other natural areas to ensure their preservation and conservation for recreational, scientific, educational, cultural, and aesthetic purposes; and
- that contributes to the development of a balanced State program of historic properties.

WHEREAS, Declarant has received a grant from the Fund for acquisition of the Property in consideration of which Declarant has agreed that the Property will be restricted in a manner that will

- preserve, enhance, restore, and maintain the natural features and resources of the Property, to provide habitat for native plants and animals, to control runoff of sediment, and to improve and maintain water quality, including providing environmental protection for surface waters of portions of Archers Creek and its tributaries.
- establish or expand a network of riparian greenways for environmental, educational, and recreational uses.
- eliminate or prevent any use of the Property that restricts, impedes, or otherwise interferes, whether directly or indirectly, with the current or anticipated military operations of Marine Corps Auxiliary Landing Field Bogue.

AND

- protect and preserve the ecological diversity represented by the Property for recreational, scientific, educational, cultural and aesthetic purposes.

WHEREAS,

- Declarant and Fund recognize that the Property is located adjacent to Archers Creek, and that the Property has been deemed by the State to qualify as a riparian buffer, addressing the protection, including, but not limited to, cleanup and prevention of pollution, of the

State's surface waters, and the establishment of a network of riparian buffers and greenways.

- Declarant and Fund recognize that the Property is adjacent to Marine Corps Auxiliary Landing Field Bogue, and that the Property has been deemed by the State to qualify as a military buffer. Declarant and Fund further recognize that restricting use of the Property in the manner set forth herein will eliminate or prevent activities that restrict, impede, or otherwise interfere, whether directly or indirectly, with the current or anticipated military operations of Marine Corps Auxiliary Landing Field Bogue.
- Declarant and Fund recognize that the Property represents the ecological diversity of North Carolina, including, but not necessarily limited to, natural features such as natural maritime forest, estuarine waters, and animal habitat. Declarant and Fund further recognize that restricting use of the Property in the manner set forth herein will facilitate preservation and conservation of these natural features for recreational, scientific, educational, cultural, and aesthetic purposes.

AND

- Declarant and Fund recognize that an important consideration for the Declarant is the future ability to responsibly develop active recreation facilities on up to 10 acres of the Property to enhance the quality of life of its residents and visitors, and that Declarant shall seek to integrate said features on the Property with a design that complements the conservation goals stated herein.

Moreover, Declarant and Fund recognize that the Property has other conservation values, including wildlife conservation, open space, and scenic values for environmental, educational, and recreation uses (hereinafter, collectively with the conservation values defined above, the "Conservation Values").

WHEREAS, the Fund requires Declarant to record these Restrictive Covenants to ensure appropriate conservation and management of the Property.

This Property was acquired (by Grantor) with financial participation from the NC Clean Water Management Trust Fund. This property, or any portion of it, may not be converted to any other use outside of those outlined in N.C.G.S. Chapter 143B, Article 2, Part 41 without the express written approval of the NC Clean Water Management Trust Fund Board of Trustees. All correspondence and requests regarding this Notice shall be forwarded to NC Department of Natural and Cultural Resources, Clean Water Management Trust Fund, 1651 Mail Service Center, Raleigh, NC 27699-1651.

NOW, THEREFORE, in consideration of the premises and the mutual benefits recited herein, together with other good and valuable consideration to Declarant and to the Fund as protector of the public interests it promotes, the Declarant hereby adopts and declares the Property subject to the restrictions hereinafter set forth, the purposes which are to protect and preserve the Conservation Values of the Property.

ARTICLE I. DURATION OF RESTRICTIVE COVENANTS

The covenants and restrictions contained in these Restrictive Covenants shall be permanent and perpetual, shall run with the land and shall be binding upon Declarant and its successors and assigns as owner of the Property, and all those claiming by, through or under each such owner, in perpetuity. These Restrictive Covenants are intended to be a “conservation agreement” and/or “preservation agreement,” as defined and contemplated in the Historic Preservation and Conservation Agreements Act, N.C.G.S. § 121-34, *et seq.*

ARTICLE II. EXCEPTIONS TO RESTRICTIONS

A. Recreation. Declarant shall be permitted to engage in and permit others to engage in passive recreational uses of the Property, including, walking, hiking, fishing, swimming, and animal or plant observation, so long as the Conservation Values are not impaired. Furthermore, Declarant shall be permitted to responsibly develop active recreation facilities on up to 10 acres of the Property as follows:

1. Recreational Use. The Property may be used for public recreational purposes including, but not limited to, camping, hiking, horseback riding, bird watching, fishing, hunting, recreational practice fields, athletic fields, other outdoor active recreational facilities, concession stands, bathrooms, picnic shelters, scoreboards, walking trails, storage facilities to house maintenance equipment and limited development to support such uses, such as well facilities, that are not inconsistent with the purpose of this Declaration of Covenants and Restrictions.

2. Public Utilities. Any area of the Property may be used for limited public utility purposes, including the installation of a public drinking water well, the infiltration of storm water runoff, and infiltration of treated wastewater effluent. However, areas cleared for these purposes are attributable to the total cleared acreage limitation, which shall not exceed 10 acres. These public utility uses are authorized subject to appropriate permitting approvals by relevant Federal and State agencies, and provided such discharges are not harmful to plant, animal, or human activities on the Property.

3. Improvements Incident to Recreational Use and Public Utilities. Improvements normally incidental to recreational use and public utilities (such as, but not limited to, railings, benches, water fountains, fences and/or restroom facilities) are permitted provided the same are consistent with the purpose of this Declaration. Trails, walkways, and a vehicular access road and parking area are permitted, and the use of loose gravel,

permanent vegetation or other organic material to stabilize or cover the surfaces is encouraged. Cleared areas may be maintained in a cleared state with continued mowing. The total area to be used for and cleared to support recreational uses, athletic fields, and public utilities, including all incidental supporting structures, shall not exceed 10 acres of the Property. The total impervious coverage associated with recreational facilities, incidental improvements, and any authorized development on the Property shall not exceed ten (10) percent of the total land area of the Property. Signs shall be permitted at the Property, provided they either (i) describe the conservation value of the Property, (ii) identify the owner of the Property, the holder of this Declaration and/or the holder of any conservation easement on the Property, (iii) provide directions, (iv) prescribe the rules and regulations for the use of the Property, (v) contain notices or warnings concerning the Property, or (vi) identify the name(s) of any recreational facilities on the Property.

B. Construction of Trails and Incidental Facilities. Declarant may construct, repair and relocate paved or unpaved greenway trails on the Property, and facilities and infrastructure incidental to and for the convenience of users of the greenway trail, such as observation platforms, boardwalks, litter receptacles, signage, canoe accesses, benches and similar conveniences. Declarant may also establish and construct on the Property parking areas near adjacent streets, and trail connections from such parking areas to the greenway trail as long as these facilities are at least 50 feet from the top of the stream bank where practicable and do not further degrade water quality. All necessary care shall be taken to complete the construction of such features in a manner so as not to impair any Conservation Values either during or after construction.

C. Maintenance. Declarant shall be responsible, at its expense, for maintaining the Property with the purposes set forth herein, including maintenance of a greenway trail, mowing, removal of trash, waste and litter, and efforts to control vandalism and other crimes on the Property.

D. Vegetation Management. Declarant may install appropriate native landscaping, remove vegetation for stream restoration, remove or control invasive exotic plants, remove dead and dangerous trees, and prune vegetation to ensure the health of the vegetation as well as the safety of the public on the Property provided these activities do not impair the Conservation Values.

E. Stream Restoration. Declarant reserves the right, at its expense, to restore and stabilize the stream channel and bank, based upon prevailing design and permitting standards, to enhance water quality on the Property. Restoration and stabilization activities should be based on a design using as many natural materials such as vegetation as practicable. In the event such stream restoration occurs, Declarant shall be responsible for maintaining the integrity of the stream bank.

F. Rules and Regulations. Declarant shall have the sole right to promulgate or approve rules and regulations for the reasonable use of the Property by the public, provided the

Property is used for the purposes stated herein, including walking, educational tours, scientific study of the Property and its natural ecosystems, hiking, bike riding, jogging, and picnicking.

G. Motor Vehicles. Declarant may use motor vehicles on the greenway trail to carry out the purposes of these Restrictive Covenants and for security purposes within the Property.

H. Utilities and other Public Purposes. Declarant shall have the right to grant easements or rights-of-way across the Property for underground utilities and other public purposes consistent with the primary purposes set forth herein. Such easements or rights-of-way shall be located in a manner that will minimize the impact on Conservation Values.

ARTICLE III. PROHIBITED AND RESTRICTED ACTIVITIES

A. Disturbance of Natural Features, Plants and Animals. There shall be no cutting or removal of trees, or disturbance of other natural features, including plant and animal life, except for the following: (1) as incidental to boundary marking, fencing, signage, construction and maintenance of asphalt and greenway trails and related convenience facilities, and public accesses allowed hereunder; (2) selective cutting or clearing of vegetation, and the application of approved chemicals for fire containment and protection, disease control, restoration of hydrology, wetlands enhancement and/or control of invasive exotic plants; (3) hunting and fishing pursuant to applicable local, state and federal rules and regulations; (4) removal of damaged trees and debris caused by storm, disease or fire and posing a threat to life or property, and (5) as expressly permitted under Article II. A. 1, 2, and 3 above.

B. Industrial and Commercial Use. Industrial and commercial activities and any right of passage across the Property for such purposes are prohibited.

C. Agricultural, Grazing and Horticultural Use. Agriculture, grazing, horticultural and animal husbandry operations are prohibited on the Property.

D. New Construction. There shall be no building, facility, mobile home, antenna, utility pole, tower, or other structure constructed or placed on the Property (except for greenway trails, incidental facilities, or facilities otherwise permitted under Article II. A. 1, 2, and 3 above).

E. Signs. Signs are not permitted on the Property except as follows: local, state, or federal traffic or similar informational signs; greenway trail signs; for sale or lease signs; signs identifying the conservation values of the Property; signs identifying the Declarant as the owner of the property and the Fund as funder of the project; educational and interpretive signs; identification labels or any other similar temporary or permanent signs; or other signs permitted under Article II. A. 1, 2, and 3 above; or other signs as approved by the Fund.

F. Dumping or Storing. Dumping or storage of trash, ashes, garbage, waste, abandoned vehicles, appliances or machinery, or other material on the Property is prohibited.

G. Mineral Use, Excavation or Dredging. There shall be no filling, excavation, dredging, mining, or drilling on the Property and no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials on the Property, except as allowed by Article II.

H. Wetlands and Water Quality. There shall be no pollution or alteration of surface waters and no activities that would be detrimental to water quality 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 the State and any other appropriate authorities.

I. Military Buffer Restrictions.

Lighting. Since the Property is recognized by the Fund as a military buffer, exterior light emissions that would interfere with pilot vision are not allowed. All lighting equipment, including but not limited to lasers, floodlights, searchlights, and recreational lighting, and all protective lighting, such as streetlights, shall have positive optical control that shines downward so that no direct light is emitted above the horizontal plane.

Emissions. Since the Property is recognized by the Fund as a military buffer, land uses that produce electrical emissions that would interfere with aircraft communications or navigational and or targeting equipment (air to air and air to ground) are prohibited.

ARTICLE IV. ENFORCEMENT AND REMEDIES

A. Enforcement. The right of enforcement of these Restrictions is hereby granted and vested with the State of North Carolina.

B. Third Party Right of Enforcement. In the event that the Declarant fails to enforce any of the terms of this Restrictive Covenants, pursuant to the terms of the Grant Contract 2017-022 between the Declarant and the State acting by and through the Fund, the State shall have the independent right to enforce the terms of this Restrictive Covenants through any and all authorities available under state law. Any forbearance by the State to exercise this third party right of enforcement shall not be deemed or construed to be a waiver by the State of such right in general or with respect to a specific violation of any of the terms of this Restrictive Covenants. And the State, its agents and employees shall have such right of entry and access as may be necessary to carry out its third party rights of enforcement set herein.

ARTICLE V. DOCUMENTATION AND TITLE

A. Property Condition. The parties acknowledge that the Property is currently undeveloped land, with no improvements except easements and rights of way of record.

B. Title. The Declarant covenants and represents that the Declarant is the sole owner and is seized of the Property in fee simple and has good right to establish the aforesaid; that there is

legal access to the Property, that the Property is free and clear of any and all encumbrances, except easements and covenants of record, none of which would nullify, impair or limit in any way the terms or effect of these Restrictive Covenants; Declarant shall defend its title against the claims of all persons whomsoever.

ARTICLE VI. MISCELLANEOUS

A. Subsequent Transfer of Fee. Declarant hereby covenants and agrees, that in the event it transfers or assigns the Property, the transferee of the Property shall 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. Declarant agrees for itself, its successors and assigns, to notify State 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. Any transferee or assignee of the Property shall take title subject to these Restrictive Covenants as set forth herein, shall perform all such acts as shall be necessary to effect the transfer. Declarant, for itself, its successors and assigns, further agrees to make specific reference to these Restrictive Covenants 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 parties hereto recognize and agree that the benefits of these Restrictive Covenants are in gross and assignable, provided, however that the Declarant hereby covenants and agrees, that in the event it transfers or assigns its interest in these Restrictive Covenants, 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) of the Internal Revenue Code, and the Declarant 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.

(2) Unless otherwise specifically set forth in these Restrictive Covenants, nothing herein shall convey to or establish for the public a right of access over the Property.


C. Amendments. Declarant shall not amend these Restrictive Covenants except with the consent of the Fund. Any amendment(s) shall be effective upon recording in the public records of Carteret County, North Carolina.

[The remainder of this page is intentionally blank.]

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

DECLARANT:

TOWN OF EMERALD ISLE, a North Carolina body politic

By: 
Frank A. Rush, Jr., Town Manager
 Name of Signatory


STATE OF NORTH CAROLINA

COUNTY OF Carteret

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

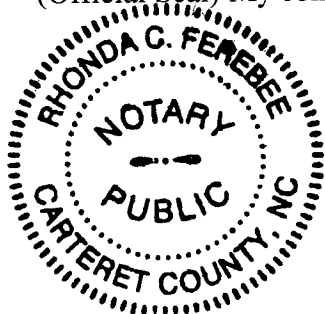
Frank A. Rush, Jr.
 Name of Signatory

Date 5/10/2018


 Official Signature of Notary

Rhonda C Ferebee
 Notary's printed or typed name

(Official Seal) My commission expires: 6/10/2019



NCLWF Conservation Benefit Analysis Review Sheet

Created 5/02/2023 by JM

Project Number 2000B-703	Project Name Coast Guard Road Stormwater (Emerald Isle Woods)	Requesting Party Town of Emerald Isle
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Score Differential G/Y/R	Resource	Impacted Conservation Area 3 acres at Emerald Isle Woods	Proposed offset 10 acres at McLean-Spell Park
-25	Riparian Buffer	Resource Name: coastal wetlands Classification: substantial ARS Score: 25	N/A
0	Historic and Cultural	N/A	N/A
-15	Natural Heritage	Resource Name: Emerald Isle Woods (R1); Interdune pond (S1/G1); Maritime Evergreen Forest (S2/G2); Maritime Swamp Forest (S2G2); painted bunting (S2) ARS Score: 48	Resource Name: Emerald Isle Archers Creek (R4); Maritime Evergreen Forest (S2/G2); Salt Shrub (S4/G5) ARS Score: 33
0	Riparian Greenway	N/A	N/A
-17	Total Score	ARS Score: 50	ARS Score: 33

NCLWF Staff Comments and Interpretation: The scoring comparison results in a negative differential for both RB and NH resources. Though the differential for RB is higher, the NH carries the score as the more significant resource. Discussion with NHP staff confirms that the two properties do not compare favorably. NCLWF staff concludes that this transaction would not result in a positive conservation outcome based on land exchange alone. However, the addition of monetary compensation and the fact that McLean-Spell Park is the only remaining unprotected natural area on the island are worth additional consideration.

Notes: Review sheet should be completed for all requests to amend NCLWF conservation agreements. All resources to be impacted should be documented in the appropriate cell. If a given resource is not impacted, replace text in the designated cell with "N/A." The "Score Differential G/Y/R" column should be color-coded to represent a positive conservation benefit (green), a neutral conservation impact (yellow), or a negative conservation impact (red).