

**AGENDA**  
**North Carolina Land and Water Fund**  
**Board of Trustees Meeting**  
August 27, 1:00 p.m. – 3:00 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 the meeting via MS Teams or in person, please contact Terri Murray at [teresa.murray@dncr.nc.gov](mailto:teresa.murray@dncr.nc.gov) or 919-707-9445 in advance to request a meeting invitation/call-in number or directions.

**Board of Trustees:**

Ann Browning (Chair), Jimmy Broughton, Chuck McGrady, Lydia Olander, Clement Riddle, Mike Rusher, Terry Shelton, John Watson, Darrel Williams

**I) COMMENCEMENT**

**A) Call to Order (Chair)**

**1) Welcome**

**2) Roll call**

**3) 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.*

**4) Please put cell phones on vibrate or turn off, and if you are a guest joining remotely, please mute your audio and turn off your video unless you are called upon to speak**

**5) Revisions, additions, and adoption of the agenda**

**6) Approval of minutes from the May 18, 2026 board meeting**

**B) DNCR update (DNCR Deputy Secretary – Jeff Michael)**

**C) Executive Director's update (Will Summer)**

**II) PUBLIC COMMENTS**

**A) The public is invited to make comments to the Board (Chair)**

*The NCLWF Guidelines and Practices 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 be limited to three minutes per person.*

### **III) BUSINESS**

#### **A) Consideration of Acquisition Committee recommendations (Committee Chair)**

The committee will report on the following matters:

- 1) 2000A-701 City of Raeford Conservation Agreement Amendment Request** (Justin Mercer, Nicolle Montero)
- 2) 1998B-504 City of New Bern Conservation Agreement Amendment Request** (Justin Mercer, Savannah Paliotti)

#### **B) Consideration of Executive Committee recommendations (Committee Chair)**

The committee will report on the following matter:

- 1) Allocation of funding to program committees for 2026 grant cycle** (Will Summer)

### **IV) ADJOURNMENT**

**Action Item**

**Staff members: Justin Mercer, Nicolle Montero**

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**Agenda Item III.A.1) 2000A-701 City of Raeford Conservation Agreement Amendment Request**

The City of Raeford is requesting an amendment of a conservation easement in Hoke County to facilitate the development of a passive use city park on the easement property.

In 2000, the City of Raeford was awarded \$178,250 for the acquisition of a conservation easement on the property and planning and design of a stormwater wetland. In 2002, a conservation easement was recorded on 39.13 acres.

The City currently has plans to develop the easement area and the surrounding city-owned land into a recreational park equipped with hiking trails and other amenities. The current easement language has very limited reserved rights allowing for public access and passive recreational uses of the property requiring no surface alteration. The City is requesting an amendment to add in NCLWF's standard reserved rights along with additional reserved rights that would allow for other park improvements including picnic shelters, a fishing pier, a canoe/kayak access, accessible parking spaces, and a kayak drop off.

In exchange for the amendment, the City is proposing that a conservation agreement be placed on the adjacent city-owned tract. This tract will also be developed and managed as part of the park.

**Committee recommendation**

Allow the conservation easement to be amended to add the NCLWF standard reserved rights along with additional reserved rights that would allow for other park improvements including picnic shelters, a fishing pier, a canoe/kayak access, accessible parking spaces, and a kayak drop off. In exchange, a conservation agreement will be placed on the adjacent city-owned tract that will be managed as part of the park.

**Board action needed**

Approve, amend, or deny the Committee recommendation.

*Attachment: Original recorded Conservation Easement, Amendment Request Letter from City of Raeford, Map of Conservation Property, Conservation Benefit Analysis Worksheet*

Mail  
STATE PROPERTY OFFICE  
1321 MAIL SERVICE CENTER  
RALEIGH, N.C. 27699-1321

STATE OF NORTH CAROLINA

COUNTY OF HOKE

Tax Parcel ID #: part of 9434-11-01-56

FILED in Hoke County, NC  
on Jul 28 2002 at 12:46:28 PM  
by: Della Mayner-Bowen  
Register of Deeds *am B*  
BOOK 512 PAGE 841

**CONSERVATION EASEMENT- 39.13 ACRE TRACT  
THOMAS JOSEPH UPCHURCH POND**

RECEIVED  
SEP 13 2002  
State Property Office

THIS CONSERVATION EASEMENT ("**Conservation Easement**") is made on this 4th day of March, 2002, by and between THE CITY OF RAEFORD, with an address at 315 N. MAIN STREET, RAEFORD, NC 28376 ("**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 39.13 acres in Hoke 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 Upchurch Pond and Peddlars Branch 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.

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

07-29-02  
09-12-02  
DELLA MAYNER-BOWEN  
REGISTER OF DEEDS

objectives of preserving the conservation and water quality values; the Exhibit A is not intended to preclude the use of other evidence (e.g. surveys, appraisals) to establish the present condition of the Property if there is a controversy over its use.

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

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

#### **ARTICLE I. DURATION OF EASEMENT**

This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land, and is enforceable by Grantee against Grantor, its representatives, successors, assigns, lessees, agents and licensees.

#### **ARTICLE II. RIGHTS RESERVED TO GRANTOR**

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

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

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

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 within the 300 foot corridor.

B. Agricultural, Timber Harvesting, Grazing and Horticultural Use. Agricultural, timber harvesting, grazing, horticultural and animal husbandry operations are prohibited on the Property within the 300 foot corridor.

C. Disturbance of Natural Features, Plants and Animals. There shall be no cutting or removal of trees, or the disturbance of other natural features within the 300 foot corridor 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) hunting and fishing pursuant to applicable rules and regulations.

D. Construction of Buildings and Recreational Use. 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. 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. 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. Notwithstanding the foregoing, the Grantor shall be allowed to maintain, repair, and improve the existing dam for Thomas Joseph Upchurch Pond.

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 the exception of an existing dam and pond, 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 with the written consent of the non-assigning party, 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 Hoke 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 Hoke 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:

By: CITY OF RAEFORD

Title: *Bob Gentry*  
Bob Gentry, Mayor

ATTEST:

*Betty Smith*  
Betty Smith, City Clerk

[SEAL]

STATE OF NORTH CAROLINA

COUNTY OF HOKE

I, Notary Public of said county and state do hereby certify that BETTY SMITH personally came before me this day and acknowledged that he/she is the Raeford City Clerk and that by authority duly given and as the act of the City of Raeford, the foregoing instrument was signed in its name by its Mayor, sealed with its Corporate seal, and attested by herself as the City Clerk.

Witness my hand and notarial seal, this the 4<sup>th</sup> day of March, 2002.

*Jody Canan*  
Notary Public

My commission expires: 1-29-2003

Following  
THE FOREGOING CERTIFICATE(S) OF  
Jody Canan  
NOTARY PUBLIC  
STATE OF NORTH CAROLINA  
COMMISSION EXPIRES  
ON 1-29-2003  
BY *Jody Canan* I



**BOOK 512 PAGE 849**  
**SCHEDULE A**

The property including a pond, dam, road, and a portion of two streams. A metes and bounds description of the property is set out below:

Lying and being in the City of Raeford, Raeford Township, Hoke County, North Carolina, about 400 feet southwest of the intersection of Oakwood Avenue and NC Highway 20, on the south side of and adjoining Oakwood Avenue, and on the east side of and adjoining the Aberdeen Rockfish Railroad, which has an 80-foot R/W each side of the center of the railroad, and being more particularly described as follows:

**BEGINNING** at a point in the Eastern R/W of the Aberdeen and Rockfish Railroad (80 feet from center), said point being located N 19°10'46" E 111.52 feet, from an iron rod in the centerline of the railroad, the most southern corner of the lands of Alice Johnson Upchurch, acquired by the Fifth Article in the last Will and Testament of J. W. Johnson recorded in Will Book 1 Page 384, Hoke County Registry and required by J. W. Johnson by Deed Recorded in Deed Book 5-Q Page 133, Robeson County Registry, and runs thence along the eastern right-of-way of said railroad N 29°09'06" W 51.77 feet to a point in said right-of-way; thence continuing as said right-of-way N 32°34'12" W 127.11 feet to a point; thence N 36°46'45" W 129.72 feet to a point in said right-of-way thence leaving said right-of-way N 04°57'43" W 850.60 feet to a point; thence N 10°11'42" E 494.08 feet to a point; thence N 36°38'08" W 251.18 feet to a point; thence S 40°08'08" W 591.46 feet to a point in the east right-of-way of the previously mentioned railroad; thence as said right-of-way of the railroad N 01°07'20" W 487.67 feet to a point in said railroad right-of-way; thence leaving the railroad right-of-way N 26°26'14" E 138.72 feet to a point; thence N 26°29'39" E 273.36 feet to point; thence N 21°08'18" E 293.52 feet to a point, the southeast corner of that tract recorded in Deed Book 69 Page 158; thence N 25°31'26" E 241.45 feet to the northeast corner of Deed Book 69 Page 158; thence N 31°35'48" E 55.20 feet to a point; thence S 87°28'00" E 68.07 feet to a point; thence N 62°08'20" E 39.07 feet to a point in the southwest right-of-way of Oakwood avenue; thence as said right-of-way of Oakwood Avenue S. 54°43'55" E 319.37 feet to a point in said right-of-way at the beginning of a curve; thence as said curve running counterclockwise to the southeast, having a radius of 364.76 feet, an arc length of 217.88 feet, and a chord bearing and distance of S 69°34'30" E 214.66 feet to an iron rebar on said right-of-way; thence S 26°16'48" E 509.17 feet to an existing iron pipe; thence S 26°16'49" E 417.93 feet to an existing iron pipe; thence S 66°33'52" W 112.74 feet to an existing iron rod; thence N 81°33'37" W 296.89 feet to an existing iron rebar; thence S 02°59'56" E 203.33 feet to an existing iron rebar; thence S 81°53'56" E 248.58 feet to an existing iron rod; thence S 14°42'18" W 248.04 feet to an existing iron rebar; thence as the lines of Agnes May Johnson Campbell, (DB 99 PG 392) N 46°14'32" W 261.92 feet to an existing iron rebar; thence S 44°02'37" W 263.97 feet to an existing iron rebar; thence S 46°12'43" E 295.13 feet to an existing iron rebar; thence S 19°10'46" W 1023.82 feet to the BEGINNING, containing 39.13 acres and being a portion of the lands of C. E. Upchurch conveyed to him by deed recorded in Deed Book 85 Page 442, Hoke County Registry and a portion of the lands of Alice Johnson Upchurch inherited by her as above explained. All bearings are to NC Grid north meridian and all distances are horizontal ground.



## CITY OF RAEFORD

John K. McNeill, III, Mayor  
Dennis Baxley, City Manager  
Regina Sutherland, City Attorney

315 N. Main Street, Raeford, NC, 28376-2629  
Telephone (910) 875-8161, Fax 875-8165

City Councilmen:  
Wayne Willis, Mayor Pro-Tem  
Johnny Boyles  
Jackie McKinnon-McLean  
Ricky L. Sandy  
Shirley Hart

July 20, 2026

Justin E. Mercer  
Stewardship Program Manager  
North Carolina Land and Water Fund  
Division of Land and Water Stewardship  
N.C. Department of Natural & Cultural Resources  
1651 Mail Service Center  
Raleigh, NC 27699

Subject: Request for Amendment to *Conservation Easement – 39.13 Acre Tract (Thomas Joseph Upchurch Pond)*

Dear Mr. Mercer,

In 2002 the State of North Carolina, through the North Carolina Clean Water Management Trust Fund, entered into an agreement with the City of Raeford to establish a conservation easement. The easement covers 39.13 acres of a 50.12-acre City-owned property and protects a 3.5-acre pond as well as a portion of Peddler's Branch. Raeford would like to utilize this property to provide passive recreation for its residents and for residents of the surrounding areas.

The acquisition of riparian buffer easements by the State was authorized by Article 13A, Chapter 113 of the General Statutes of North Carolina "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". While the recorded conservation easement encourages recreational uses, the easement requires that those uses involve "no surface alteration of the land". The administration of the North Carolina Land and Water Fund has interpreted this phrase to prohibit passive recreation activities since providing any such activity would require some form of surface alteration of the land. Because of this contradiction between stated purpose and restriction, the City of Raeford is petitioning to amend the conservation easement pertaining to this property so a passive recreation park can be developed.

As per Section V of the North Carolina Land and Water Fund's *Stewardship Program Guidelines and Practices*, the following information is provided for consideration in granting an amendment to the conservation easement:

**A. Name, address, phone number, and email address of the property owner (plus parcel data):**

|                               |                                                                        |                                       |
|-------------------------------|------------------------------------------------------------------------|---------------------------------------|
| <b>Parcel:</b>                | PIN #:                                                                 | 694341101059                          |
|                               | Deed Book / Page:                                                      | 475 / 428 (dated 01/01/2001)          |
|                               | Physical Address:                                                      | 516 Oakwood Ave.<br>Raeford, NC 28376 |
| <b>Conservation Easement:</b> | Deed Book / Page:                                                      | 512 / 841 (dated 07/29/2002)          |
| <b>Owner:</b>                 | City of Raeford<br>315 N. Main St.<br>Raeford, NC 28376                |                                       |
| <b>Contact:</b>               | Dennis Baxley, City Manager<br>(910) 875-8161<br>dbaxley@raefordnc.org |                                       |

**B. Nature of activity proposed to be conducted:**

The City of Raeford plans to develop 53.7-acre of City-owned property into a passive recreation park. The park property is comprised of two parcels: a 50.12-acre parcel which contains the 39.13-acre conservation easement, and

a 3.58-acre tract which is not subject to the conservation easement. The portion of the park within the conservation easement would contain trails, picnic shelters, a fishing pier, canoe/kayak access, and a pedestrian bridge/boardwalk. There would also be two handicap parking spaces and a kayak drop-off to allow for access to the pond. To limit disturbance of the conservation easement, the smaller 3.58-acre tract would contain the parking lot, a restroom/maintenance building, picnic shelters, and additional trails.

The proposed trails will wind throughout the existing woodlands and around the pond for a total distance of approximately 1.8 miles. Trails will be designed as 8'-wide Class 4 and Class 5 trails as per the US Forest Service Trail Class Matrix. The large trail width will allow for multiple uses, easy maintenance, and emergency access. A combination of surfaces, both improved and natural, and a variety of slopes (2%-12%) will provide more varied and challenging trails than are currently available in Raeford. The City currently has only one loop trail of 0.33 miles which has slopes ranging from 0%-2%.

***C. Location of the activity with reference to the NCLWF project number and/or Deed book and page:***

The property and conservation easement are located in the City of Raeford, Raeford Township, Hoke County, North Carolina, approximately 400' west of the intersection of Oakwood Avenue and NC Highway 20 (St Paul's Road). Access to the property/easement area is on the south side of Oakwood Avenue. The property is bounded on the western edge by the Aberdeen Rockfish Railroad. Please see attached Vicinity Map. The easement boundary is described in *Schedule A* of the Conservation Easement recorded in Hoke County Deed Book 512 Page 841 (see attached Recorded Easement).

***D. Map(s) of sufficient detail to accurately delineate the boundaries of the land proposed to be impacted to carry out the activity, including the location and dimensions of any disturbance associated with the activity. When possible, a GIS shape file must be submitted:***

Please see attached City Pond Park Plan.

***E. Explanation of why the plan for this activity cannot be practically accomplished, reduced, or reconfigured to avoid the need to amend the conservation agreement, or alternatively to better minimize disturbance to the conservation area and its identified conservation values:***

The conservation easement under *Article II: Rights Reserved to Grantor* states that the Grantor has the following rights expressly reserved:

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

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

By this the City of Raeford has the right to utilize the property for passive recreation in a way consistent with the proposed plan and in a way that does not pose a threat to the conservation values of the easement. However, the phrase "requiring no surface alteration" deems any improvements to the site within the conservation easement area impossible. Raeford cannot develop or promote any type of passive recreation even though it is a stated right and even though one of the easement's stated purposes is to establish "... a network of riparian greenways for environmental, education, and recreational uses..." (*Recitals & Conservation Purposes. C.*).

Additionally, utilization of the site for any public access will require that handicap accessibility be provided. Meeting the standards of the Americans with Disabilities Act (ADA) will necessitate some paving and may require the selective removal of some vegetation. This is prohibited in the current conservation easement language. The park features have been arranged to minimize impacts on the conservation easement. The parking lot, restroom/maintenance building, and three picnic shelters will be constructed outside of the easement on the 3.58 acre adjacent parcel. The park features planned for the conservation easement area are necessary for access to and enjoyment of the pond and surrounding woodlands.

***F. Plans for any best management practices or restoration practices to be use to control the impacts associated with the activity:***

The design of the trails will utilize sustainable trail design elements including:

**1. The Half Rule:** The slope of the trail shall be less than half of the slope of the land on either side of the trail.

**2. Ten Percent Average Guideline:** The average trail slope shall be 10% or less.

**3. Maximum Sustainable Trail Grade:** While the average trail grade shall be no more than 10%, some sections of trail may exceed this depending on factors including use, soil type, grade reversals, and annual rainfall.

**4. Grade Reversals:** Points along a trail where the slope levels out and reverses as a way to use gravity to ensure that stormwater runs off the trail surface.

**5. Outslope:** The downhill edge of the trail is slopes 2%-5% downhill to keep water off the trail. This is also called "cross slope".

The new trails will be kept a minimum of 50' away from the pond edge to the extent possible. Additionally, if there is a need to make a turn on a slope, climbing turns will be used.

***G. Acknowledgement of receipt of a copy of the NCLWF Conservation Agreement Amendment Guidelines and Practices:***

The City of Raeford received a copy of the *NCLWF Conservation Agreement Amendment Guidelines and Practices*.

***Additional Information:***

**Offset of Conservation Impacts:**

As per *Section VI.A.* of the *NCLWF Conservation Agreement Amendment Guidelines and Practices*, the City of Raeford has discussed the offset of conservation impacts with the NCLWF. The existing easement applies to 39.13 acres of the larger 50.12-acre parcel. The City and the NCLWF have discussed the option of adding the remaining 10.99 acres of the 50.12-acre main tract to the conservation easement. The City of Raeford would still be the Grantor; and the State would still be the Grantee; and the property would still be used for public, not private, benefit. This proposed offset would unify the entire parcel under the amended easement's stated goals and restrictions.

**Park Need:**

In 2023, the City of Raeford updated its Park Master Plan. As part of the Master Planning process, residents were asked to complete questionnaires about the existing state of the City's parks, the recreational activities in which they participated, and ways to improve the park facilities and recreational offerings. 257 households responded with completed surveys. Those households represented a total of 905 residents of all age groups. Survey results indicated that residents most wanted the addition of trails and open space/natural areas. Results also showed that many residents leave Raeford for recreation, primarily for jogging, biking, and walking. The City Pond property provides an excellent opportunity to satisfy the needs and desires of the community.

The development of the City Pond property into a park featuring extensive trails will provide residents with recreational opportunities that haven't previously existed in any of the City's parks. The proposed trails for walking, jogging, and biking will be longer and more challenging, winding through natural woodlands and along the 3.5 acre pond. Upon completion the new park will add 1.8 miles of new trails of both natural and improved surfaces. Most trails will be 8' wide and many areas will be accessible.

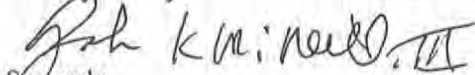
Raeford is the county seat of Hoke County, a Tier 1 county. According 2020 Census data, Raeford has 1,812 households which have a median income of \$34,231, well below the national median income of \$67,521. There is a 27.2% poverty rate, above the 11.4% national rate. The employment rate is 44.4% and 13.5% of residents live without healthcare. The median age is 38.9.

**Existing Structure:**

While gathering field data for a topographic survey for the proposed trails, the remains of an old wooden structure were found. The remains consist of a partially collapsed wood structure and a brick chimney. This may be a structure from the property's former use as a farm and homestead. An aerial photo from 1938 shows a structure in the area where the remains were found (see attached City Pond 1938 Aerial).

In July 2024 information was submitted to the North Carolina State Historic Preservation Office (NCSHPO) for Environmental Review. The existence of the structure was unknown at that time. The NCSHPO will be notified of the structure's location so it can be evaluated for historic value.

Thank you for your consideration in this matter. Please let us know if you require any additional information.

  
Sincerely,

John K. McNeill III, Mayor

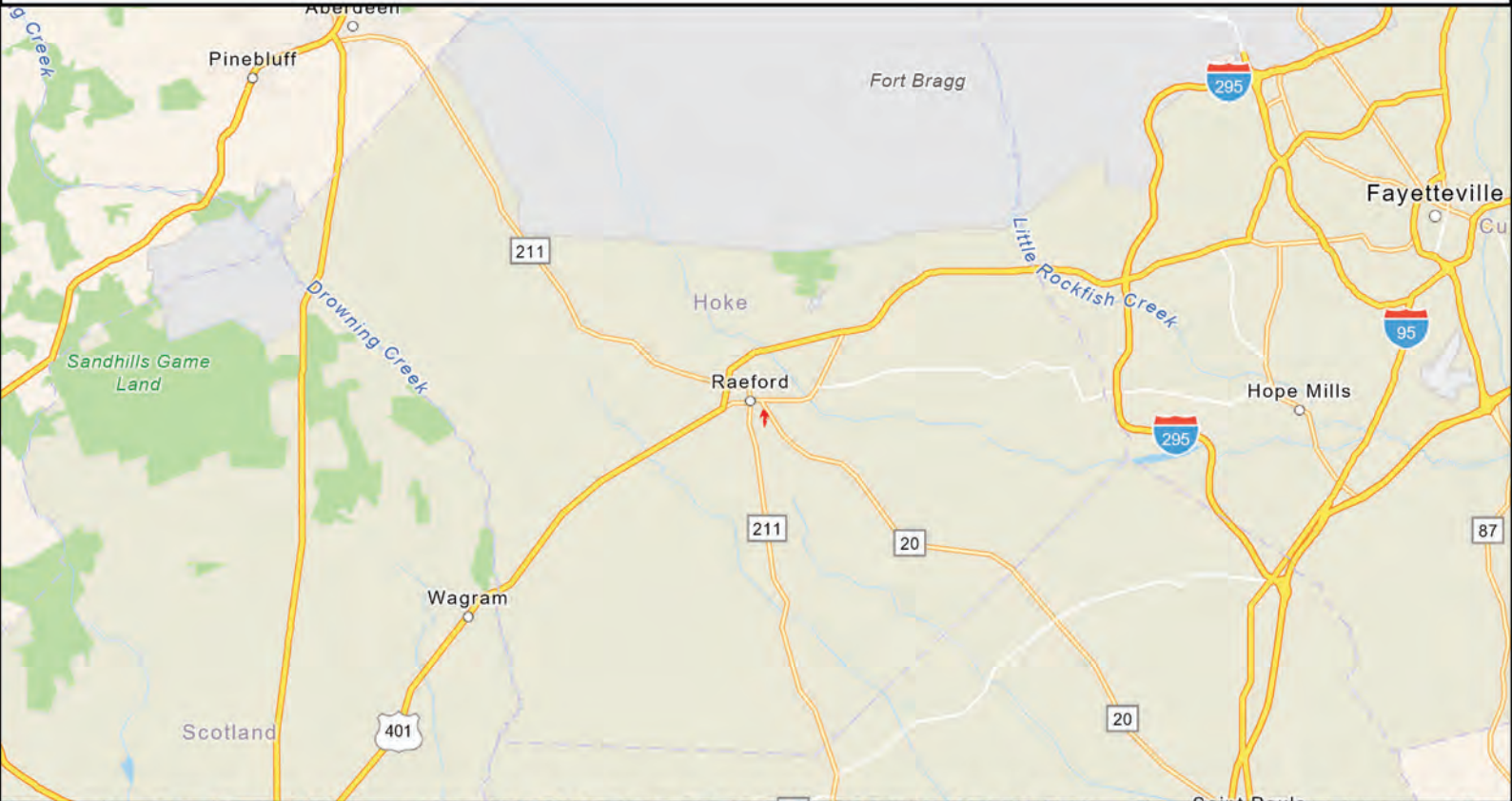
# 2000A-701 City of Raeford -Thomas Joseph Upchurch Pond

Property owned by City of Raeford  
Hoke County - 39.13 acres  
Map created by Nicolle Montero 7/28/2026

Legend

Easement Boundary

Streams



## NCLWF Conservation Benefit Analysis Review Sheet

Created 7/27/26 by Nicolle Montero

| Project Number | Project Name                                 | Requesting Party |
|----------------|----------------------------------------------|------------------|
| 2000A-701      | Thomas Joseph Upchurch Pond (Design Wetland) | City of Raeford  |

| Score Differential G/Y/R | Resource              | Current restrictions                                                | Amended Restrictions                                                |
|--------------------------|-----------------------|---------------------------------------------------------------------|---------------------------------------------------------------------|
| 0                        | Riparian Buffer       | Resource Name: Peddler Branch<br>Classification: C<br>ARS Score: 17 | Resource Name: Peddler Branch<br>Classification: C<br>ARS Score: 17 |
| N/A                      | Historic and Cultural | Resource Name:<br>Classification:<br>ARS Score:                     | Resource Name:<br>Classification:<br>ARS Score:                     |
| N/A                      | Natural Heritage      | Resource Name:<br>Classification:<br>ARS Score:                     | Resource Name:<br>Classification:<br>ARS Score:                     |
| N/A                      | Riparian Greenway     | Resource Name:<br>ARS Score:                                        | Resource Name:<br>ARS Score:                                        |

### NCLWF Staff Comments and Interpretation:

This amendment request does not seek to release any of the easement area, instead, it is requesting the addition of reserved rights to allow for improvements to create a passive use park. The rights requested are routinely considered for modern easements and have minimal negative impacts on existing conservation values. This worksheet demonstrates a neutral change in the Riparian Buffer resource with the amended restrictions. However, there is an added recreational benefit that is not recognized by the worksheet. The addition of 10+ acres of protected land that is adjacent to the existing easement will also provide further benefits for protecting the Riparian Buffer resource.

**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).

**Riparian Buffer:**

- a.) Surface Water Classification: **15** (All other surface waters – class C)
- b.) Integrated Ecological Networks: **2** (buffers 1-2 miles of streams but is greater than 1 mile from property with conservation agreements or deed restrictions in place to protect stream buffers)

**Total: 17**

**Action Item****Staff members: Justin Mercer, Savannah Paliotti**

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**Agenda Item III.A.2) 1998B-504 City of New Bern Conservation Agreement Amendment Request**

The City of New Bern is requesting the amendment of a conservation easement on Martin Marietta Park to maintain their Public Works Facility.

**Background**

In 1998, the North Carolina Land and Water Fund awarded the City of New Bern up to \$6,431,000 to purchase an abandoned quarry from Martin Marietta Materials Inc. and adjacent landowners to redirect wastewater treatment plant effluent to the former quarry and manage it as a wastewater polishing and disposal facility. The objectives of this project were to protect the quality of waters of the Neuse River by eliminating the direct discharge of tertiary treated wastewater from the Neuse River and to reduce nitrogen loading. This project resulted in a total of three conservation easements, totaling 830.34 acres, held by the State of North Carolina.

In 2026, NCLWF staff discovered that the City's Public Works facility was constructed in an approximately 1.6-acre portion of the Martin Marietta and Cook easements shortly after the easement recordation in 2005. This facility provides many of the essential services that serve the City's residents, visitors, and businesses.

As a potential resolution, the City of New Bern and NCLWF staff have identified a ±6-acre parcel owned by the City consisting of forested wetland that has been proposed in exchange for the area occupied by the Public Works facility and a future power substation expansion.

**Committee recommendation**

Amend the easement to release approximately 2 combined acres of the 729.5-acre Martin Marietta easement and the 85-acre Cook easement to accommodate the continued use of their Public Works Building and future substation expansion in exchange for protection of comparable conservation land at a 3:1 ratio.

**Board action needed**

Approve, amend, or deny the Committee recommendation.

*Attachment: Original recorded Conservation Easement, Amendment Request Letter from City of Raeford, Map of Conservation Property, Conservation Benefit Analysis Worksheet*

Wanda Davis

Work Flow No: 9999-00249342

Tax Parcel ID # 8-244-4000

STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

**CONSERVATION EASEMENT**

**Martin Marietta Property**

Craven NC - Document Stamp  
Becky Thompson, Register of Deeds  
Date 05/09/2005 Time 13:43:18 1 of 16 Pgs  
No: 2005-00125830

Book **2304** Page **699**

Fee Amt : 59.00

Excise Tax: 00

THIS CONSERVATION EASEMENT ("**Conservation Easement**") is made on this 24<sup>th</sup> day of August, 1999, by and between CITY OF NEW BERN, a North Carolina municipality, with an address at 300 Pollock Street, New Bern, NC 28562 ("**Grantor**") and the STATE OF NORTH CAROLINA, with its address c/o State Property Office, 116 W. Jones Street, Raleigh, NC 27611 ("**State**" or "**Grantee**"), acting solely through the North Carolina Clean Water Management Trust Fund, with its address at 2313-B Executive Park Circle, Greenville, NC 27834 ("**Fund**").

**RECITALS & CONSERVATION PURPOSES**

A. Grantor is the sole owner in fee simple of the property being approximately 729.5 acres in Craven 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. Grantor has received a grant from the Fund (Grant Agreement 1998B-504 between City of New Bern and Clean Water Management Trust Fund) for acquisition of the Property for use as a wastewater polishing and disposal facility in consideration of which Grantor has agreed that it will be conserved and managed in a manner that will protect the quality of the waters of the Neuse River and otherwise promote the public purposes authorized by Article 13A, Chapter 113 of the N.C.G.S; and,

E. Grantor has received a grant from the Fund (Grant Agreement 1998B-504 between City of New Bern and Clean Water Management Trust Fund) for certain activities that would physically alter the Property to allow it to be used as a wastewater polishing and disposal facility. Such activities will be referred to herein as the "**Project**"; and,

F. 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. Dikes will be erected by the Grantor as required to carry out the Project; and.

G. 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 Grant of a 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 therefor. 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.

It is specifically understood and agreed, however, that the Property has been acquired so the Grantor may "...redirect wastewater treatment effluent to the quarry and manage the quarry as a wastewater polishing and disposal facility ("the Project)..."

#### 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. It is specifically understood and agreed, however, that the real estate, which is the subject of this Conservation Easement, is being acquired so that the Grantor may complete the Project.

#### ARTICLE II. RIGHTS RESERVED TO GRANTOR

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

conservation purposes of this Conservation Easement. The following rights are expressly reserved:

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

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

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.

It is specifically understood and agreed that the Property is to be used for the Project. Nothing contained in this Article III shall prohibit said use.

In addition, Martin Marietta has reserved the right to remove and sell stockpiles of excavated material, which are located on the Property. Nothing contained herein shall prohibit it from doing so.

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

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

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

C. Disturbance of Natural Features, Plants and Animals. There shall be no cutting or removal of trees, or the disturbance of other natural features except for the following: (1) as incidental to boundary marking, fencing, signage, construction and maintenance of nature trails and public access allowed hereunder; (2) 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) hunting and fishing pursuant to applicable rules and regulations.

D. Construction of Buildings and Recreational Use. 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. 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. 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, Grantees are 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 Property is fully described on Exhibit A, attached hereto and incorporated herein by reference. The parties acknowledge that the Property is currently undeveloped land, with no improvements other than those described on Exhibit A, attached hereto and incorporated herein by reference, together with 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 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. Grantee shall record this instrument and any amendment hereto in timely fashion in the official records of Craven 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 Craven 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. It is specifically understood that the Property will be used in order to complete the Project.

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 therein.

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.

It is specifically understood and agreed by and between parties that nothing contained herein shall limit the right of the City of New Bern to implement the Project identified in Grant Agreement 1998B-504 between the City of New Bern and the Clean Water Management Trust Fund, said project consisting of redirecting wastewater treatment plant effluent to the Martin Marietta quarry, and managing the quarry as a wastewater polishing and disposal facility.

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:

By: 

Title: \_\_\_\_\_

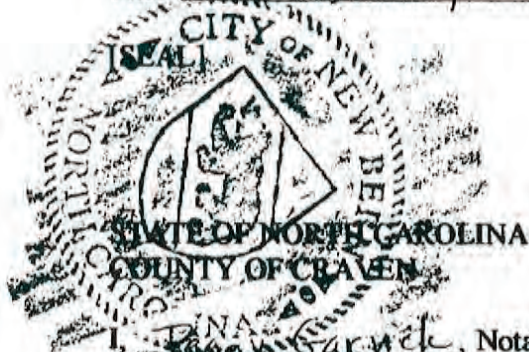
Mayor

ATTEST:

Vicki John  
Title: City Clerk

Date 05/09/2005 Time 13:43:18 9 of 16 Pgs  
No: 2005-00125830

Book **2304** Page **707**



I, Peggy Garwick, Notary Public, do hereby certify that THOMAS A. BAYLISS, ~~he~~ personally came before me this day and acknowledged that he is Mayor of the CITY OF NEW BERN and that by authority duly given and as the act of the City, the foregoing instrument was signed in its name by its Mayor, sealed with its city seal, and attested by its City Clerk.

Witness my hand and notarial seal this the 9th day of May, 2005.

Peggy Garwick  
Notary Public

My Commission Expires: 10/08/05



STATE OF NORTH CAROLINA  
Craven COUNTY

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

This 9 day of May, 2005.

Becky Thompson  
Register of Deeds  
by Michelle L. Seak  
deputy

EXHIBIT A  
PROPERTY DESCRIPTION

Date 05/09/2005 Time 13:43:18 10 of 16 Pgs  
No: 2005-00125830  
Book **2304** Page **708**

**TRACT 1:**

Lying and Being in the City of New Bern, County of Craven, State of North Carolina and BEGINNING at a PK Nail located at the intersection of the center line of Glenburnie Road (formerly Oaks Road) a 60 right-of-way, and the A & N.C. Railroad, a 200' right-of-way, and preceding thence from said PK Nail, N46°05'00"E 198.50' to a point in the center line of Glenburnie Road formerly Oaks Road, and thence N43°55'00"W 25' to a point in the western right-of-way of Glenburnie Road (formerly Oaks Road), the TRUE POINT OF BEGINNING.

Proceeding from said TRUE POINT OF BEGINNING N43°55'00"W 15', thence N46°05'00"E 159.86', thence N43°55'00"W 200.00', thence S46°05'00"W 250.00', thence N37°40'00"W 186.11', thence N46°05'00"E 1747.90', thence N07°50'00"W 6.50', thence N23°45'00"W 101.16', thence S46°05'00"W 1777.98', thence N39°00'00"W 50.18', thence N46°05'00"E 1790.43', thence N28°20'00"W 285.07', thence N12°10'00"W 395.00', thence N11°50'00"W 510.00', thence N33°35'00"E 212.00', thence N24°25'00"W 136.00', thence N48°30'00"W 54.00', thence N07°50'00"E 193.00', thence N26°20'00"W 65.00', thence N44°00'00"E 140.00', thence N13°50'00"E 111.00', thence N38°50'00"W 189.74', thence S47°30'00"W 2018.79', thence N38°42'00"W 230.02', thence N73°50'00"W 154.00', thence N23°20'00"W 325.00', thence N02°50'00"E 94.00', thence N76°40'00"W 219.00', thence N45°35'00"W 182.00', thence N47°35'00"W 211.19' to the northwest corner of the property currently or previously owned by Roy Game (Deed Book 493, Page 367), thence S30°35'00"W 329.93' to an existing iron pipe in the westerly line of said Roy Game tract, thence N34°38'58"W 378.71' to an existing iron pipe set in the northwest corner of the property currently or previously owned by Stony Hill subdivision (Plat Cabinet B, Slide 362), thence S32°06'39"W 64.00' to an existing iron pipe, thence N57°49'39"W 312.20' to an existing iron pipe, thence S57°07'37"W 28.46', thence N42°53'42"W 402.50' to an existing iron pipe in the northwest corner of the property currently or previously owned by Richard Ordiway (Deed Book 1272, Page 338, Deed Book 1309, Page 614), thence S55°58'18"W 67.80', thence N39°58'52"W 1181.63' to a PK Nail found in the northwest corner of the property currently or previously owned by SOS Equities, LLC (Deed Book 1611, Page 859), thence S57°24'30"W 58.57' to an existing iron pipe, thence N35°27'57"W 410.57' to an existing iron pipe in the northwest corner of the property owned by A.L. Ferguson, M.D. (Deed Book 1436, Page 426), thence

N64°25'45"E 59.20', thence N31°01'00"W 102.35', thence N08°12'27"E 58.60', thence N05°04'25"W 158.91', thence N02°00'42"E 114.34' to an existing iron pipe in the northwest corner of the property currently or previously owned by Samuel Rogers (Deed Book 1187, Page 264), thence N64°34'00"E 406.13' to an existing concrete monument in the northeast corner of the property currently or previously owned by Craven Association (Deed Book 1008, Page 516), thence N28°44'00"W 492.84' to an existing concrete monument in the northeast corner of the property currently or previously owned by New Bern VOA Elderly Housing, Inc. (Deed Book 1548, Page 255), thence N28°44'00"W 698.62' to an existing iron pipe in the northeast corner of the property currently or previously owned by Vera Davis (Deed Book 921, Page 142, Deed Book 402, Page 75), thence N28°44'00"W 2413.47' to the northwestern corner of the property currently or previously owned by Vera Davis (Deed Book 921, Page 142, Deed Book 402, Page 75), thence N75°22'48"E 1611.37' to an existing iron pipe in the southeastern corner of the property currently or previously owned by Lee & James Building Supplies Subdivision (Map Book 12, Page 66), thence N75°22'48"E 1501.49' to a point in the southern property line of the property currently or previously owned by Thomas Sugg (Deed Book 1129, Page 42), thence proceeding along the wetland area, the following calls:

S24°03'27"E 344.70';

S05°27'51"E 365.63';

S11°56'09"W 488.02';

S55°10'35"E 315.30';

S35°19'27"E 173.90';

S16°36'35"E 295.92';

S82°07'07"E 106.87';

N71°33'19"E 611.34';

N83°31'49"E 397.53';

N74°57'34"E 403.30';

N75°46'03"E 191.07';

N45°19'00"E 391.19';

N43°52'44"E 391.23';

S45°45'11"E 586.65';

S33°57'57"E 219.14';

S41°59'28"E 116.85';

S60°51'33"E 797.52' to a well;  
S29°40'37"W 110.21';  
S50°39'02"W 564.26';  
S23°08'23"W 92.09';  
S33°21'48"E 587.26';  
S61°41'41"E 65.90';  
S84°19'07"E 299.14';  
S80°07'53"E 599.97' to a point in the northwestern bank of the barge slip.

Proceeding along the bank of the barge slip the following calls:

S46°07'33"W 507.59';  
S41°51'05"W 298.17';  
S44°06'10"W 563.37';  
S45°21'53"W 135.72' to a point in the northeastern boundary line of the plant area.

Proceeding thence with the boundary line of the plant area N41°37'32"W 394.28', thence S86°43'02"W 465.13', thence S66°18'45"W 270.43', thence S45°31'14"W 97.89', S16°07'05"W 268.28', thence S01°49'10"E 162.48', thence S59°31'04"W 384.28'; thence S31°50'10"E 419.87', thence S41°54'05"E 780.65', thence S25°57'48"E 240.27', thence S17°40'35"W 269.07', thence S08°28'46"W 142.22', thence S03°12'26"E 212.48', thence S78°23'36"E 373.97', thence N22°08'33"E 290.91', thence N62°00'35"E 73.76', thence S54°45'04"E 78.00', thence S33°28'52"E 125.42', thence N72°21'12"E 78.93', thence N02°19'12"E 502.89' to a point in the southwesternmost bank of the barge slip, thence N50°49'38"E 164.34', thence N08°09'20"W 492.45', thence N14°43'05"W 230.13', thence N04°53'56"W 407.91', thence N07°40'06"E 354.40', thence N35°11'59"E 225.47', thence N47°54'12"E 512.23', thence N43°31'26"E 822.24', thence N50°30'19"E 380.61', thence S30°00'00"E 49.33', thence S69°28'27"E 761.07', thence S40°11'37"E 227.83', thence S26°16'58"W 64.63', thence N88°12'51"W 332.04', thence S47°14'02"W 669.73', thence S54°06'57"W 311.65', thence N83°53'02"W 776.55', thence S28°35'00"E 39.00', thence S19°55'00"W 422.00', thence S26°01'00"W 276.90', thence S04°38'00"W 365.80', thence S35°35'00"E 902.70' to an existing iron pipe in the northwest corner of the property currently or previously owned by Barrus Construction Company (Deed Book 797, Page 130), thence S46°05'00"W 799.40', thence S09°45'00"E 315.67', thence

S46°05'01"W 24.13', thence S34°40'00"E 451.11' to the northeastern corner of the property currently or previously owned by Thomas Ipock (Deed Book 1546, Page 532), thence proceeding along the northern property line of the property currently or previously owned by Thomas Ipock S46°05'00"W 228.79' to a point, thence S46°18'00"E 400.35' to a point in the northern right-of-way of Glenburnie Road (formerly Oaks Road), a 60 foot right-of-way, thence along said right-of-way S46°05'00"W 2801.62' to the **TRUE POINT OF BEGINNING** and containing 729.50 acres, more or less, as shown on that map entitled "Survey For City of New Bern Martin Marietta Site" prepared by Robert M. Chiles, P.E., dated July 29, 1998 and recorded at Plat Cabinet G, Slide 83-D of the Craven County Registry.

**TOGETHER WITH** a nonexclusive access easement over and upon the existing access road, thirty feet in width, which runs from S. Glenburnie Road to the 55.0 +/- acre Plant Area identified on that map entitled "Survey For City of New Bern Martin Marietta Site" prepared by Robert M. Chiles, P.E., dated July 29, 1998, and recorded at Plat Cabinet G, at Slide 83 D of the Craven County Registry;

And the extension of said access road in a northerly direction along and with the eastern line of the Plant Area, across the 55 acre plant site to the Property being conveyed hereby to the City of New Bern. This access is intended to be a non-exclusive access easement to the Property conveyed to Grantee herein. Grantee and Grantor agree that if at some time in the future this access ceases to exist or interferes with Grantor's intended use of the Plant Area, the Grantor will provide alternate access, said alternate access to be mutually agreeable and acceptable to both Grantor and Grantee.

**TOGETHER WITH** an easement 50 feet in width on which a dike is to be constructed by the Grantee, in two locations on the Plant Area as described on plat entitled Site Plan with Boundary Survey, Martin Marietta Quarry, Water Reclamation Facility, bearing date July 22, 1999, a copy of which is on file in the office of the City Engineer of the City of New Bern, and in the office of Rivers and Associates, 107 East Second Street, Greenville, NC 27835. Notwithstanding anything to the contrary in this paragraph, it is expressly understood and agreed that the dikes: (i) shall not result in any substantial flooding of the Plant Area; (ii) shall not impair or restrict Grantor's intended use of the Plant Area to store Saleable Material; (iii) shall not block access to any substantial part of Plant Area; or (iv) shall not block access to the Saleable Material stored in the Plant Area.

**TRACT 2:**

Lying and Being in the City of New Bern, County of Craven, State of North Carolina and **BEGINNING** at a PK Nail located at the intersection of the center line of Glenburnie Road (formerly Oaks Road) a 60 right-of-way and the A & E.C. Railroad, a 200' right-of-way preceding thence from said PK Nail, N32°23'15"W 536.03' to the northeastern corner of what was formerly the A. & E.C. Railroad right-of-way, the **TRUE POINT OF BEGINNING**.

Proceeding thence from said **TRUE POINT OF BEGINNING**, the following calls: N39°00'00"W, 50.18'; thence S50°37'57"W, 46.50'; thence S55°50'10"W, 50.00'; thence S60°52'21"W, 50.00'; thence S65°54'32"W, 50.00'; thence S70°56'43"W, 50.00'; thence S75°58'54"W, 50.00'; thence S80°19'09"W, 36.13'; thence S68°10'00"E, 89.97'; thence N74°17'13"E, 31.39'; thence N69°39'27"E, 50.00'; thence N65°01'42"E, 50.00'; thence N60°23'56"E, 50.00'; thence N55°46'10"E, 50.00'; and N50°59'14"E, 50.00' to the **TRUE POINT OF BEGINNING** and containing .35 acres, more or less, as shown on that map entitled "Survey For City of New Bern Martin Marietta Site" prepared by Robert M. Chiles, P.E., dated July 29, 1998 and recorded at Plat Cabinet G, Slide 83-D of the Craven County Registry. Also being a portion of that railway easement to A. & E.C. Railroad as recorded in Deed Book 601, Page 161 of the Craven County Register of Deeds.

**TRACT 1 AND TRACT 2** collectively referred to herein as the "Property".

Grantor makes this conveyance less and except the following parcels:

1. All out conveyances by Grantor of public record in Craven County prior to May 1, 1997.
2. That area as shown in Plat Cabinet G, Slide 83-D, and known as the "Plant Area" containing no more than 55 acres in total and abutting the Barge Slip together with the 30 foot access roadway easement.
3. That area, as shown in Plat Cabinet G, Slide 83-D, and known as the "Wetland Area", bounding the Neuse River, and comprising no more than 175 acres in total. Grantor also reserves the non exclusive right for use of that existing road which runs approximately with the eastern boundary of the property. This access is retained as a non-exclusive access easement to the Wetland Area

retained by Grantor. Grantee agrees that if at some time in the future this road ceases to exist or becomes flooded, Grantee will provide alternate access to Grantors property, said alternate access to be mutually agreeable and acceptable to both Grantor and Grantee.

4. That area as shown in Plat Cabinet G, Slide 83-D, and known as the "Barge Slip" and further described as the body of water running from the Neuse River up to and along the Plant Area from high water mark to high water mark.

5. It shall be specifically excluded from this conveyance any right, title or interest in and to that General Permit NCG020000 and Certificate of Coverage NCG020153, as renewed from time to time, issued by the State of North Carolina Department of Environment, Health and Natural Resources. Grantor expressly retains all rights to this permit and said rights are not a part of this conveyance.

Grantor expressly reserves a non-exclusive easement for ingress, egress and regress as shown as a "30' Access Easement See Detail Sheet 2" on that plat as recorded in Plat Cabinet G, Slide 83-D.

Grantor expressly reserves ownership of all sand, screenings, stone and any product or proceeds of mining activities which currently exist on the Property (the "Saleable Material"). Grantee agrees to allow the Grantor, its employees, contractors and customers, access to all Saleable Material that may remain on the Property and the right to remove and sell this material for the benefit and profit of the Grantor for a period of three (3) years following the date of this conveyance.

Grantee further agrees to allow Grantor, its employees and agents access to the Property for a period of up to three (3) years following the date of this conveyance for the purpose of performing reclamation on the property, as required by The Mining Act of 1971. Pursuant to N.C. Gen. Stat. § 74-56 (1998), the Property has been inspected and approximately 42 acres, more or less, adjacent to the Plant Area, remain to be reclaimed.

Termination of Mining as defined in N.C. Gen. Stat. § 74-49(17) (1998) has occurred on the Property.

To the extent it may legally do so, Grantee covenants and agrees, at its sole cost and expense, and at no cost to Grantor, to indemnify, protect, defend and save harmless Grantor from and against any and all damages, losses, liabilities, obligations, penalties, fines, claims of any kind, litigation, costs, expenses, mitigation requirements, and orders or directives of any federal, state or local court, governmental agency or authority, relating to or arising from the discharge, intentional or accidental, of wastewater onto the Wetland Area or the Plant Area, retained by Grantor hereunder, (including the Grantors successors or assigns) or the violation of any laws which affect said Wetland Area and Plant Area. This indemnity is intended to be a covenant and shall be binding upon Grantee's successors in interest.



Doc No: 10072497  
Recorded: 03/29/2021, 03:15:39 PM  
Fee Amt: \$26.00 Page 1 of 7

CRAVEN County, North Carolina  
Sherri B. Richard Register of Deeds

Bk **3661** Pg **1882**

*Book 17*

After Recording Return To:

North Carolina Department of Administration  
c/o State Property Office  
✓ 1321 Mail Service Center  
Raleigh, North Carolina 27699-1321  
SPO File No. 25-BT

STATE OF NORTH CAROLINA

AMENDMENT TO CONSERVATION EASEMENT

COUNTY OF CRAVEN

THIS AMENDMENT TO CONSERVATION EASEMENT ("Amendment") is made as of the last date set forth in the notary acknowledgments below, by and between the CITY OF NEW BERN, a North Carolina municipality ("Grantor"), whose address is 300 Pollock Street, New Bern, NC 28562, and the STATE OF NORTH CAROLINA ("Grantee"), acting on behalf of the North Carolina Clean Water Management Trust Fund, whose address is c/o State Property Office, 116 W. Jones Street, Raleigh, NC 27603. The designations Grantor and Grantee as used herein shall include said parties, their heirs, successors, and assigns, and shall include singular, plural, masculine, feminine, or neuter as required by context.

WITNESSETH:

WHEREAS, The Grantor and Grantee previously entered into an agreement entitled Conservation Easement, Martin Marietta Property dated August 24, 1999, recorded in Book 2304 at Pages 699-714 in the Craven County Registry (the "Conservation Easement"); and

WHEREAS, Grantor is the sole owner in fee simple of the Property subject to the Conservation Easement; and

WHEREAS, Grantor requested and received approval by the Clean Water Management Trust Fund Board at its June 5, 2018 to amend the Conservation Easement to expand reserved rights for recreational facilities on the former quarry site as set forth herein; and

WHEREAS, the execution of this Amendment for and on behalf of Grantee has been duly approved by the Governor and Council of State at a meeting held in the City of Raleigh, North Carolina, on the August 6, 2019; and

WHEREAS, Grantor and Grantee have agreed to modify the Conservation Easement in order to amend certain rights in the Easement Area.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor and Grantee hereby agree as follows:

1. The foregoing recital of facts is hereby incorporated herein to the same extent as if hereinafter fully set forth.
2. The Conservation Easement is incorporated into this Amendment by this reference. All capitalized terms appearing in this Amendment and not otherwise defined herein shall have the meanings ascribed to such terms in the Conservation Easement.
3. Grantor and Grantee hereby modify "ARTICLE II. RIGHTS RESERVED TO GRANTOR" by deleting Article II in its entirety and inserting in its stead the following:

#### ARTICLE II. RIGHTS RESERVED TO GRANTOR

A. **Passive Recreational Use.** Grantor reserves the right to engage in and to permit others to engage in passive recreational uses of the Easement Area requiring minimal surface alteration of the land, so long as related alterations, construction, improvements, maintenance, activities, and uses pose no threat to the Conservation Values. By way of illustration, such passive recreational uses may include non-commercial hunting, non-commercial fishing, hiking, walking, scientific study, animal/plant observation, nature and environmental education, historic tours, photography, camping and any other purposes consistent with these accepted uses and the maintenance of the Conservation Values, subject to all applicable federal, state, and local laws and regulations.

B. **Public Use and Access.** Grantor reserves the right to allow public access and use of the Easement Area for the purpose of creating open space with associated passive recreational activities as provided for herein.

C. **Existing Roads and Trails.** Grantor reserves the right to maintain existing unpaved roads and trails in the Easement Area. These roads and trails shall not be paved or covered with asphalt, but gravel and permanent vegetation may be used to stabilize them. Associated ditches, culverts, and bridges may be maintained and replaced as necessary as maintenance of the road or trail. All necessary care shall be taken to maintain existing roads and trails in a manner so as not to impair any Conservation Values. Existing roads shall not be realigned without the prior written consent of the Fund.

D. **Greenway Trails.** Subject to the Fund's prior written approval, Grantor reserves the right to construct paved greenway trails in the Easement Area for the purpose of recreation. All

paved greenway trails must be located a minimum distance of 30 feet from the top of bank of surface waters, unless such locations are physically impracticable, and must be located so as not to impair the Conservation Values. When required by the terrain, paved greenway trails may include boardwalks, ramps, and handrails to the extent necessary. The Grantor may also construct and maintain park benches, litter receptacles, and trail/feature signs along paved greenway trails. All necessary care shall be taken to construct and maintain such features and paved greenway trails in a manner so as not to impair any Conservation Values either during or after construction. The Fund reserves the right to close any paved greenway trails that are considered detrimental to the Conservation Values. All realignments of greenway trails shall be treated the same as new greenway trails and require the prior written approval of the Fund.

E. Natural Surface Trails. Grantor reserves the right to construct natural surface trails in the Easement Area for the purpose of hiking and non-motorized bicycling. All natural surface trails must be located a minimum distance of 30 feet from the top of the bank of surface waters, unless such locations are physically impracticable, and must be located so as not to impair the Conservation Values. All trail construction involving soil disturbance must follow best practices for sustainable trail design and construction and must have prior written approval by the Fund. When required by the terrain, natural surface trails may include boardwalks, ramps, and handrails to the extent necessary. The Grantor may also construct and maintain park benches, litter receptacles, and trail/feature signs along natural surface trails. All necessary care shall be taken to construct and maintain such features and natural surface trails in a manner so as not to impair any Conservation Values either during or after construction. The Fund reserves the right to close any natural surface trails that are considered detrimental to conservation values. All realignments of natural surface trails are subject to the requirements of this paragraph.

F. Stream Crossings. Grantor reserves the right to construct and maintain bridges or other stream crossings across streams in the Easement Area, provided such crossings are connected to trails permitted herein, constructed in a way as to maximize water quality protection, and permitted by all applicable regulatory authorities. The number and width of stream crossings must be minimized. New stream crossings and realignments thereof, require the prior written approval of the Fund.

G. Observation/Viewing Platform. Grantor reserves the right to construct, maintain, and repair ten (10) observation/viewing platform(s) in the Easement Area with optional bench seating, handrails, and connecting steps and ramps as required by the terrain, so long as the Conservation Values are not impaired. Observation/viewing platforms may be located on the bank of surface waters if allowed and approved by all applicable regulatory authorities, provided such platforms must connect to a trail permitted herein. All necessary care shall be taken to construct and maintain observation/viewing platforms in a manner so as not to impair any Conservation Values either during or after construction.

H. Environmental Education Kiosks. Grantor reserves the right to construct signage and kiosks outside of a fifty (50) foot riparian buffer, as measured from the top of the bank of surface waters, to provide for public environmental education on the Easement Area.

I. Campsite Areas. Grantor reserves the right to construct and maintain on the Easement Area primitive campsites, camping shelters elevated on piles, and camping tree houses, all with associated fire rings to be located a minimum of fifty (50) feet from the top of the bank of surface waters.

J. Canoe/Kayak/Boat Access, Docking, Launch and Storage. Grantor reserves the right to construct and maintain on the Easement Area four (4) canoe/kayak/boat/docking access, launch and storage site, to be located on the bank of surface waters, so long as the same is permitted by, and installed and maintained in compliance with, rules and regulations of the NC DEQ or other agency with regulatory authority over the activity.

K. Covered Picnic Shelter and Picnic Tables. Grantor reserves the right to construct, maintain and repair fifteen (15) covered picnic shelters to be constructed of materials consistent with industry standards and located a minimum distance of 100 feet from the top of the bank of surface waters.

L. Playground. Grantor reserves the right to construct, maintain and repair one (1) adventure playground zone to be constructed of industry standard materials and located a minimum distance of 100 feet from the top of the bank of surface waters.

M. Vehicular Access, Roads and Parking. Grantor reserves the right to improve, maintain, repair, replace, expand and relocate the existing road network on the Easement Area, and construct a parking area to be located in a manner that does not materially diminish the wooded, open space character, and scenic and natural qualities of the Easement Area as compared to those conditions existing on the date of this Conservation Easement.

N. Boathouse Building. Grantor reserves the right to construct, maintain and repair one multi-purpose building for administration, operations, programming, and safety purposes, to be constructed of industry standard materials. Boathouse can be located on the bank of surface waters, so long as the same is permitted by, and installed and maintained in compliance with, rules and regulations of the NC DEQ or other agency with regulatory authority over the activity.

O. Utilities. Grantor reserves the right to construct new utilities intended to serve the allowable uses of the Easement Area.

P. Convenience Facilities. Grantor reserves the right to construct, maintain, and repair three (3) convenience facilities on the Easement Area to be located a minimum distance of 100 feet from the top of the bank of surface waters.

Q. Swim Area and Water Based Recreation. A swim area with aquatic amenities may be sited within the Easement Area provided it is located, constructed, and maintained in a manner that does not materially diminish the natural open-space character and scenic qualities of the Easement Area as compared to those conditions existing on the date of this Conservation Easement.

R. Early Successional Habitat Areas. Grantor reserves the right to maintain existing early successional habitat areas in early successional habitat for the purpose of providing habitat diversity for wildlife species and may include the planting of various native grasses, forbs, and herbaceous vegetation.

S. Native Community Restoration, Management, and Maintenance. Grantor reserves the right to perform all activities necessary to restore, manage, and/or maintain the native plant and animal communities in the Easement Area. All necessary care shall be taken to protect all Conservation Values, and restoration, management, and maintenance activities shall be carried out in a manner so as not to impair any Conservation Values either during or after the activities.

6. To the extent modified herein, and as so modified, the Conservation Easement is hereby ratified and confirmed and continues in full force and effect.

**[Signatures on Following Pages]**

Doc No: 10072497

Bk 3661 Pg 1886

IN TESTIMONY WHEREOF, the Grantor and Grantee have caused this Amendment to Conservation Easement to be executed to be effective the day and year first above written.



Grantor:

CITY OF NEW BERN  
a North Carolina Municipality

  
Mayor

ATTEST:

  
City Clerk

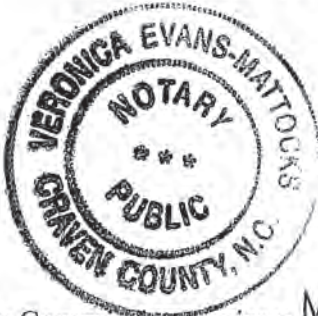
STATE OF NORTH CAROLINA

COUNTY OF CRAVEN

I, Veronica Evans-Mattocks, a Notary Public of Craven

County in the State of North Carolina, certify that DANA EDWARDS OUTLAW personally appeared before me this day and acknowledging to me that he is the Mayor of the CITY OF NEW BERN and that by authority duly given and as the act of the City, the foregoing instrument was signed in its name by its Mayor, sealed with its City seal, and attested to by its City Clerk.

Witness my hand and official seal, this the 21<sup>st</sup> day of August, 2020.



My Commission expires: May 19, 2023

Veronica Evans-Mattocks  
Notary Public

Veronica Evans-Mattocks  
(Printed Name of Notary)

Doc No: 10072497

Bk 3661 Pg 1887

Grantee:

STATE OF NORTH CAROLINA

By:

Governor

Roy Cooper

ATTEST:

Elaine F. Marshall  
Secretary of State

APPROVED AS TO FORM:  
JOSH STEIN, Attorney General

By: Leah W. C.  
Assistant Attorney General



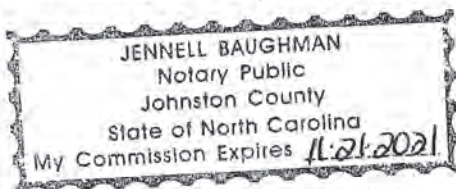
STATE OF NORTH CAROLINA

COUNTY OF WAKE

I, Jennell Baughman, a Notary Public for Johnston County, North Carolina, do certify that ELAINE F. MARSHALL, Secretary of State of the State of North Carolina, personally came before me this day and acknowledged that she is Secretary of State of the State of North Carolina, and that by authority duly given and as the act of the State, the foregoing instrument was signed in its name by ROY COOPER, Governor of the State of North Carolina, sealed with the Great Seal of the State of North Carolina, and attested by herself as Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the 20th day of July, 2020.

My commission expires: 11-21-2021



Jennell Baughman  
Notary Public  
Print Name: Jennell Baughman

**V. Amendment Request Requirements** – The following outlines the minimum required information for amendment requests, although additional information may be requested as needed:

**A. Property Contact Information:**

City of New Bern  
300 Pollock Street  
P.O. Box 1129  
New Bern, NC 28563-1129

252-639-4000

[hughesf@newbernnc.gov](mailto:hughesf@newbernnc.gov)

**B. Nature of the activity proposed to be conducted**

The City of New Bern is requesting an amendment to provide the Public Works Facility with adequate space for ongoing operations, maintenance, and future management activities while preserving the integrity of the adjacent riparian buffer within the conservation easement. As discussed with NCLWF staff, the proposed excluded area would begin approximately 50 feet from the existing Public Works structure.

**C. Location of the activity with reference to the NCLWF project number and/or Deed book and page**

|                       |                       |
|-----------------------|-----------------------|
| NCLWF Project Number: | 1998B-504             |
| Property Name:        | Martin Marietta       |
| Location :            | City of New Bern      |
| Deed Book:            | BK. 2304, Pg. 699-724 |

**E. Explanation of why the plan for this activity cannot be practically accomplished, reduced, or reconfigured to avoid the need to amend the conservation agreement, or alternatively to better minimize disturbance to the conservation area and its identified conservation values**

The City of New Bern Public Works Facility was constructed in 2005–2006 at 1004 S. Glenburnie Road and serves as the primary operations center for multiple Public Works divisions and approximately 60 employees. The facility's central location within the city provides efficient access to state highway corridors, downtown New Bern, and other service areas, allowing staff to respond effectively to operational and emergency needs.

Relocating the facility is not a practical alternative due to the substantial financial burden it would impose on the City and the significant disruption to essential public services. The requested amendment represents the most practical approach while

minimizing impacts to the conservation easement. The proposed exclusion area has been limited to the minimum extent necessary to accommodate current maintenance activities and the planned expansion of the adjacent electric substation.

**F. Plans for any best management practices or restoration practices to be used to control the impacts associated with the activity**

The City of New Bern proposes to fully compensate for the requested amendment by conveying replacement conservation land to the North Carolina Land and Water Fund (NCLWF) at a ratio of 3:1. This mitigation is intended to offset the impacts associated with the existing Public Works Facility and the proposed future expansion area for the electric substation. The replacement property will provide conservation value consistent with NCLWF's conservation objectives and will ensure that the overall conservation benefits of the project are maintained or enhanced.

**G. Acknowledgement of receipt of a copy of the NCLWF Conservation Agreement Amendment Guidelines and Practices.**

The City of New Bern acknowledges receipt of the North Carolina Land and Water Fund (NCLWF) Conservation Agreement Amendment Guidelines and Practices.

## NCLWF Conservation Benefit Analysis Review Sheet

Created 7/22/26

|                                    |                                        |                                             |
|------------------------------------|----------------------------------------|---------------------------------------------|
| <b>Project Number</b><br>1998B-504 | <b>Project Name</b><br>Martin Marietta | <b>Requesting Party</b><br>City of New Bern |
|------------------------------------|----------------------------------------|---------------------------------------------|

| Score<br>Differential<br>G/Y/R | Resource                    | Impacted Conservation Area<br>±1.6 acres of Martin Marietta easement                            | Proposed offset<br>5.93 acres Jack's Creek Wetlands                                                           |
|--------------------------------|-----------------------------|-------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------|
| 0                              | Riparian<br>Buffer          | <b>Resource Name:</b> Neuse River<br><b>Classification:</b> SC, Sw, NSW<br><b>ARS Score:</b> 50 | <b>Resource Name:</b> Jack's Creek, Neuse River<br><b>Classification:</b> SC, Sw, NSW<br><b>ARS Score:</b> 50 |
| N/A                            | Historic<br>and<br>Cultural | <b>Resource Name:</b><br><b>Classification:</b><br><b>ARS Score:</b>                            | <b>Resource Name:</b><br><b>Classification:</b><br><b>ARS Score:</b>                                          |
| N/A                            | Natural<br>Heritage         | <b>Resource Name:</b><br><b>Classification:</b><br><b>ARS Score:</b>                            | <b>Resource Name:</b><br><b>Classification:</b><br><b>ARS Score:</b>                                          |
| N/A                            | Riparian<br>Greenway        | <b>Resource Name:</b><br><b>ARS Score:</b>                                                      | <b>Resource Name:</b><br><b>ARS Score:</b>                                                                    |

**NCLWF Staff Comments and Interpretation:** The two parcels score the same for riparian buffer under the current ARS due to their proximity to the Neuse River (within 1 mile). The result is an equal resource score for both parcels, however, the existing 1.6-acre portion currently sits on an already degraded quarry site, while the Jack's Creek property consists of mature, forested wetland. The increased conservation value and increased acreage result in an overall positive conservation benefit for the proposed swap parcel.

**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).

# 1998B-504: Martin Marietta

Property of the City of New Bern  
Craven County - 830.34 total acres



## Legend

- Martin Marietta Boundary
- Game
- Cook
- Windy Hills



# Martin Marietta Improvements

Approximate area of disturbance: 1.7 acres

## Legend

- Martin Marietta Boundary
- Cook

- Tax Parcels
- Windy Hills
- Game





# Craven County GIS Parcel ID 8-020-001 5.93 Ac.

Craven County does NOT warrant the information shown on this map and should be used ONLY for tax assessment purposes. Printed on July 18, 2025 at 7:48:36 AM

1 inch = 126 feet

N

**Action Item****Staff member: Will Summer**

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**Agenda Item III. B. 1) Allocation of funding to program committees for 2026 grant cycle**

In advance of the funding meeting each year, the Executive Committee allocates anticipated available funds to each funding committee, delegates additional responsibilities to those committees, and directs staff how to handle additional revenue and returned funds for the remainder of the fiscal year.

For the last five years, the board allocated 80% to the Acquisition Committee and 20% to the Restoration, Innovative Stormwater, and Planning Committee, generally reflective of the demand in those years. As the table below demonstrates, that is also consistent with the demand this year.

The breakdown of the 2026 applications between the programs is as follows:

|                       | # of apps  | requested \$         | % by amount requested |
|-----------------------|------------|----------------------|-----------------------|
| Acquisition           | 70         | \$ 75,972,611        | 79.8%                 |
| Restoration           | 35         | \$ 15,888,773        | 16.6%                 |
| Innovative Stormwater | 8          | \$ 2,081,320         | 2.2%                  |
| Planning              | 19         | \$ 1,303,480         | 1.4%                  |
| <b>Total</b>          | <b>132</b> | <b>\$ 95,246,184</b> |                       |

**Committee recommendation**

For the 2026 grant cycle, all available funds should be allocated as follows: 80% of funds to the Acquisition Committee, 20% of funds to the Restoration, Innovative Stormwater, and Planning Committee. The Acquisition Committee will be charged with allocating funding for the Donation Mini-Grant Program. The Restoration, Innovative Stormwater, and Planning Committee will be charged with allocating funding for each of their three program areas based on the merit of the applications during project review. All returned or unspent grant funds received after the funding meeting will revert to their respective programs to be used for provisional awards for the remainder of the fiscal year.

**Board action needed**

Approve, amend, or deny the Committee recommendation.