

WAKE COUNTY, NC 83
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
10/13/2004 AT 10:33:14

WAKE COUNTY, NC 47
LAURA M RIDDICK
REGISTER OF DEEDS
PRESENTED & RECORDED ON
09/24/2004 AT 09:17:51

BOOK:011055 PAGE:01255 - 01267

BOOK:011027 PAGE:00148 - 00158

STATE OF NORTH CAROLINA

CONSERVATION EASEMENT

WAKE COUNTY

SPO File Number 92 bt

Prepared by William A. Anderson, III, PO Box 51579, Durham, NC 27717-1579.

This instrument is being re-recorded to add Exhibit A-2 which was inadvertently omitted in the first recording.

Return to:

State Property Office

Marion Patrick

1321 Mail Service Center

Raleigh, NC 27699-1321

By:

William A. Anderson, III
William A. Anderson, III
Drafting Attorney

ENV - USSA

THIS CONSERVATION EASEMENT DEED, made this ____ day of _____, 2004, by PANTHER CREEK - RALEIGH LIMITED PARTNERSHIP, North Carolina limited partnership, and CARY PARK PROPERTY OWNERS ASSOCIATION, a North Carolina nonprofit corporation, collectively, Grantor, to the STATE OF NORTH CAROLINA. Grantee, whose mailing address is State of North Carolina State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321. 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, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8 et seq., the State of North Carolina has established the Ecosystem Enhancement Program within the Department of Environment and Natural Resources for the purposes of acquiring, maintaining, restoring, enhancing, and creating wetland and riparian resources that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; and

WHEREAS, the Ecosystem Enhancement Program in the Department of Environment and Natural Resources has approved acceptance of this instrument; and

WHEREAS, the acceptance of this instrument for and on behalf of the State of North Carolina has been granted to the Department of Administration by resolution as approved by the Governor and Council of State adopted at a meeting held in the City of Raleigh, North Carolina, on the 8th day of February 2000; and

WHEREAS, pursuant to the provisions of N.C. Gen. Stat. § 143-214.8, two of the components of the Wetland Restoration Program are (1) restoration and perpetual maintenance of wetlands, riparian areas, and surface waters and (2) land ownership and management; and

WHEREAS, Grantor owns in fee simple certain parcels of real property situated, lying, and being in Cary Township, Wake County, North Carolina (the "Property"), the Property being a portion of Tract 3 containing 347.912 acres conveyed to Panther Creek-Raleigh Limited Partnership as described in the deed of record in Deed Book 7250, Page 893, Wake County Registry, part of said portion of the Property being deeded by Panther Creek-Raleigh Limited Partnership to Cary Park Property Owners Association by virtue of the deed recorded in Deed Book 9430 at Page 83 of the Wake County Registry, North Carolina; and

WHEREAS, Grantor is willing to grant a Conservation Easement over a portion of the Property, thereby restricting and limiting the use of said portion of the Property to the terms and conditions and for the purposes hereinafter set forth, and Grantee is willing to accept such easement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity, a Conservation Easement of the nature and character and to the extent hereinafter set forth, over the portion of the Property containing a total of 7.91 acres, more or less, referred to hereafter as the Easement Area, for the benefit of the people of North Carolina, and being all of the those tracts of land more particularly described on Exhibit A, Exhibit A-1, and Exhibit A-2, all of which is incorporated herein by reference.

The purposes of this Conservation Easement are to preserve, maintain, restore, enhance, and create wetland and/or riparian resources in the Easement Area that contribute to the protection and improvement of water quality, flood prevention, fisheries, aquatic habitat, wildlife habitat, and recreational opportunities; to maintain permanently the Easement Area in its natural condition, consistent with these purposes; and to prevent any use of the Easement Area that will significantly impair or interfere with these purposes. To achieve these purposes, the following conditions and restrictions are set forth:

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, their personal representatives, heirs, successors, and assigns, lessees, agents, and licensees.

II. GRANTOR RESERVED USES AND RESTRICTED ACTIVITIES

The Easement Area shall be restricted from any development or usage that would impair or interfere with the purposes of this Conservation Easement. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Easement Area by the Grantor is prohibited as inconsistent with the purposes of this Conservation Easement. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee. The following specific uses are prohibited, restricted, or reserved as indicated:

- A. **Recreational Uses.** Grantor expressly reserves the right to undeveloped recreational uses, including hunting and fishing, and access to the Easement Area for the purposes thereof. Usage of motorized vehicles in the Easement Area is prohibited.
- B. **Educational Uses.** The Grantor reserves the right to undeveloped educational uses and the right of access to the Easement Area for such purposes including organized educational activities such as site visits, studies, and observations.
- C. **Vegetative Cutting.** Cutting, removal, mowing, harming, or destruction of any vegetation in the Easement Area is prohibited.
- D. **Industrial Use.** Industrial activities in the Easement Area are prohibited.
- E. **Residential Use.** Residential use of the Easement Area is prohibited.
- F. **Commercial Use.** Commercial activities in the Easement Area are prohibited.
- G. **Agricultural Use.** Agricultural use of the Easement Area including use for cropland, waste lagoons, or pastureland is prohibited.
- H. **New Construction.** There shall be no building, facility, mobile home, or other structure constructed or placed in the Easement Area, except fencing or elevated walkways as permitted by law.
- I. **Signs.** No signs shall be permitted in the Easement Area except interpretive signs describing restoration activities and the conservation values of the Easement Area, signs identifying the owner of the protected property and the holder of the Conservation Easement, signs identifying the boundaries of the Easement Area and signs giving directions or prescribing rules and regulations for the use of the Easement Area.
- J. **Dumping.** Dumping of soil, trash, ashes, garbage, waste, abandoned vehicles, appliance or machinery, or other material in the Easement Area is prohibited.
- K. **Grading, Mineral Use, Excavation, Dredging.** There shall be no grading, filling, excavation, dredging, mining, or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals, or other materials.
- L. **Water Quality and Drainage Patterns.** There shall be no diking, draining, dredging, channeling, filling, leveling, pumping, impounding or related activities, or altering or tampering with water control structures or devices, or disruption or alteration of the restored, enhanced, or created drainage patterns. In addition, diverting or causing or permitting the diversion of surface or underground water into, within or out of the Easement Area by any means, removal of wetlands, polluting or discharging into waters, springs, seeps, or wetlands, or use of pesticide or biocides is prohibited.
- M. **Subdivision.** Subdivision, partitioning, or dividing the Easement Area is prohibited.

- N. **Development Rights.** No development rights which have been encumbered or extinguished by this Conservation Easement shall be transferred pursuant to a transferable development rights scheme or cluster development arrangement or otherwise.
- O. **Other.** Grantor will provide notice of conveyance of this Conservation Easement to the Town of Cary which holds greenway and sewer easements adjacent to said Conservation Easement recorded in Book of Maps 2004 Pages 809-812 and Book of Maps 2002 Page 1393, Wake County Registry. A copy of the notice will be forwarded to: Ecosystem Enhancement Program (attention Stephanie Horton), Mail Service Center 1619, Raleigh, NC 27699-1619.

The Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area and shall have the right of reasonable ingress and egress to the Easement Area over the Property, at all reasonable times to undertake any activities to restore, manage, maintain, enhance, and monitor the wetland and riparian resources of the Easement Area. These activities include planting of trees, shrubs and herbaceous vegetation, installation of monitoring wells, utilization of heavy equipment to grade, fill, and prepare the soil, modification of the hydrology of the site, and installation of natural and manmade materials as needed to direct in-stream, above ground, and subterranean water flow. In addition, the Grantee, and authorized representatives of the Grantee, shall have the right to enter the Easement Area over the Property, at all reasonable times for the purpose of inspecting said property to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The easement rights granted herein do not include public access rights.

The Grantor may request permission to vary from the above restrictions for good cause shown, provided that any such request is consistent with the purposes of this Conservation Easement. The Grantor shall not vary from the above restrictions without first obtaining written approval from the Wetlands Restoration Program, whose mailing address is 1619 Mail Services Center, Raleigh, NC 27699-1619.

IV. ENFORCEMENT AND REMEDIES

- A. In the event that the Grantee determines that the Grantor has violated or is threatening to violate any of these terms, conditions, or restrictions, the Grantee may institute a suit to enjoin such violation and if necessary, to require the restoration of the Easement Area to its prior condition at the expense of the Grantor.
- B. No failure on the part of Grantee to enforce any covenant or provision hereof shall discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of Grantee to enforce the same in the event of a subsequent breach or default.

V. MISCELLANEOUS

- A. This Conservation Easement shall be construed to promote the purposes of N.C. Gen Stat. §143-214.8 et seq., the Wetlands Restoration Program.
- B. 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 the 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.
- C. Any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other address(es) as either party establishes in writing upon notification to the other.
- D. Grantor shall notify Grantee in writing of the name and address and any party to whom the Easement Area or any part thereof is to be transferred at or prior to the time said transfer is made. Grantor further agrees to make any subsequent lease, deed, or other legal instrument by which any interest in the Easement Area is conveyed subject to the Conservation Easement herein created, unless such transfer of an interest in the Easement Area is to Grantee or to an agency, division, department or authorized representative of Grantee.

VI. QUIET ENJOYMENT

Grantor reserves all rights accruing from ownership of the Property, including the right to engage in or permit or invite others to engage in only those uses of the Easement Area that are expressly reserved herein, not prohibited or restricted herein, and are not inconsistent with the purposes of this Conservation Easement. Without limiting the generality of the foregoing, the Grantor expressly reserves to the Grantor, and the Grantor's invitees and licensees, the right of access to the Easement Area, and the right of quiet enjoyment of the Easement Area.

TO HAVE AND TO HOLD the said rights and easements perpetually unto Grantee for the aforesaid purposes.

AND Grantor covenants that Grantor is seized of said premises in fee and has the right to convey the permanent easement herein granted; that the same are free from encumbrances, except easements, restrictions and rights of way of record, and that Grantor will warrant and defend title to the same against the claims of all persons whomsoever.

IN TESTIMONY WHEREOF, the Grantor has caused this instrument to be executed the day and year first above written.

CARY PARK PROPERTY OWNERS ASSOCIATION,
a North Carolina nonprofit corporation

By: [Signature]
vice President

STATE OF NORTH CAROLINA

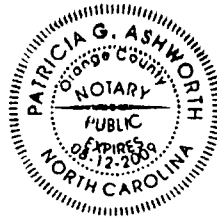
COUNTY OF Orange

I, a Notary Public of the County and State aforesaid, certify that Dennis Rexbelle personally came before me this day and acknowledged that he is vice President of CARY PARK PROPERTY OWNERS ASSOCIATION, a North Carolina nonprofit corporation, and that by the authority duly given and as the act of the corporation, the foregoing instrument was signed in its name by its vice President.

Witness my hand and official stamp or seal, this 17 day of September, 2004.

Patricia A. Ashworth
Notary Public

My Commission Expires: 8/12/2009



PANTHER CREEK-RALEIGH LIMITED PARTNERSHIP, a North Carolina limited partnership

By: Panther Creek-Raleigh GP, L.L.C., a North Carolina limited liability company, its General Partner

By: ~~Hearthstone~~ Advisors, Inc., a California

By: [Signature] (SEAL)
~~Saravia~~ Vice President

STATE OF Illinois

COUNTY OF Cook

I, Maria R. Saravia, a Notary Public for said County and State, do hereby certify that Marcelo Bucal personally appeared before me this day and acknowledged that he is the Sr. Vice President of HEARTHSTONE ADVISORS, INC., a California corporation, manager of PANTHER CREEK-RALEIGH GP, L.L.C., the sole general partner of PANTHER CREEK-RALEIGH LIMITED PARTNERSHIP, a limited partnership, and that he, as Sr. Vice President, being authorized to do so, executed the foregoing on behalf of the corporation.

WITNESS my hand and official stamp or seal, this 16 day of Sept, 2004.

[Signature]
Notary Public

My Commission Expires: 8/14/05

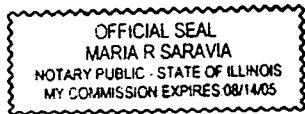


EXHIBIT A

Legal Description of Easement Area

TRACT 1

BEING all of those certain areas fifty-six (56) feet in width described as "Existing 56' Corps of Engineers Stream Buffer and Town of Cary Greenway Easement" (totaling 12.57 acres, more or less, as shown on Exhibit A-2) as shown on those certain plats recorded in Book of Maps 2004, Page 810 and 812, Wake County Registry (collectively, the "Buffer"), which Buffer lies immediately adjacent to the normal pool level of 258 feet above sea level of the lake shown on said plats.

SAVING AND EXCEPTING THEREFROM any and all of those areas within the Buffer shown as sanitary sewer easements on the plats recorded in Book of Maps 2004, Pages 810 and 812, Wake County Registry (see also plats recorded in Book of Maps 2000, Page 508 and Book of Maps 2001, Pages 584-587, inclusive, all in the Wake County Registry), and those areas shown as the Town of Cary Greenway Easement 20 feet in width on the plats recorded in Book of Maps 2004, Pages 811 and 812, which excepted areas contain 6.30 acres, more or less, as shown on Exhibit A-2.

TRACT 2

BEING all of those Littoral Shelf Easement Areas numbered 1-3, inclusive, as further described on continued Exhibit A, Exhibit A-1, and Exhibit A-2.

The Easement Area contains a total of 7.91 acres, more or less, as shown on Exhibit A-2.

EXHIBIT A
CONTINUED

LITTORAL SHELF EASEMENT AREA 1

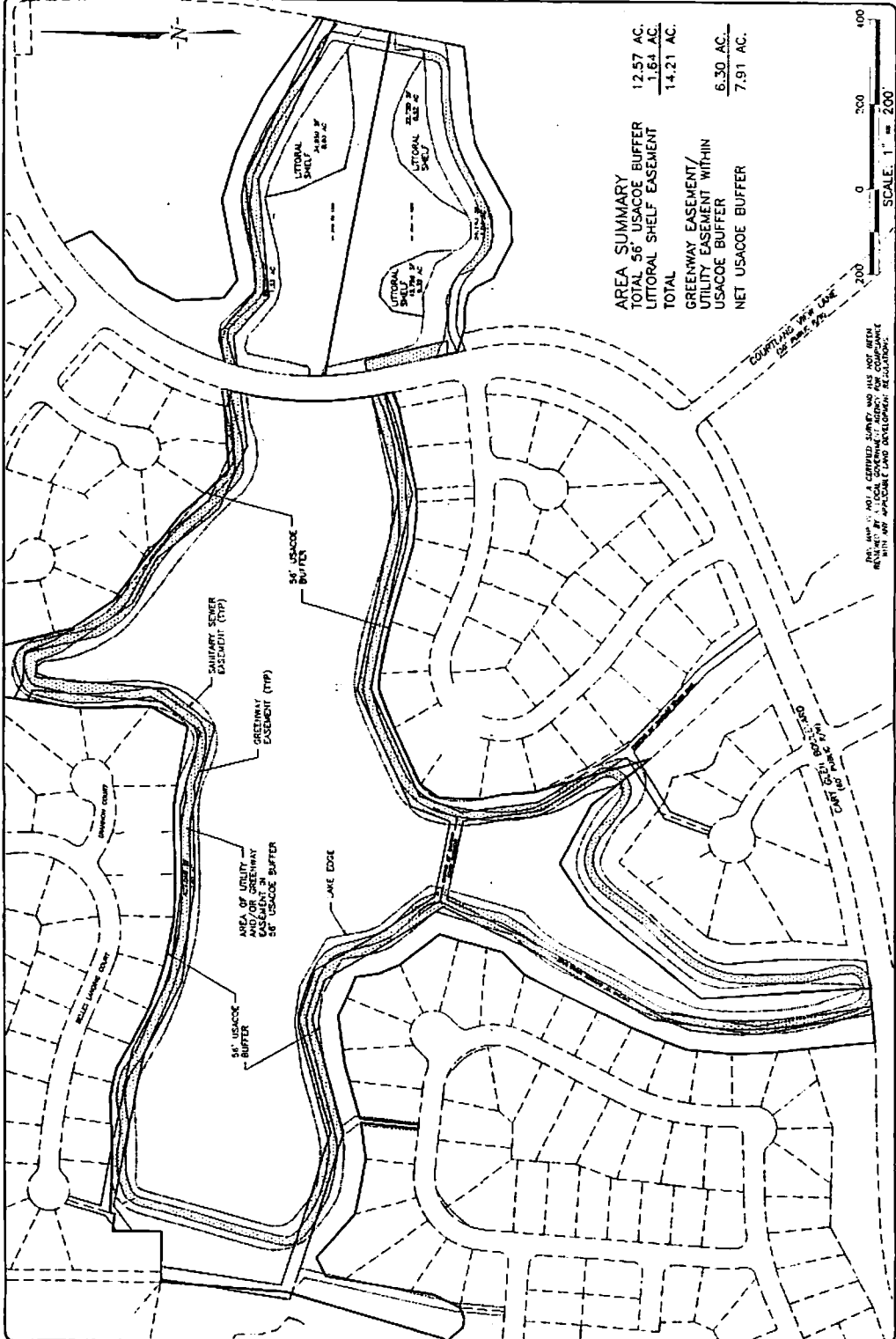
Beginning at an iron pipe in the eastern right-of-way of Cary Glen Boulevard, said iron pipe being located approximately 358' north of the centerline intersection of Walford Way; thence S79°28'37"E, a distance of 40.01 feet to a point; thence S50°43'25"E, 34.63 feet to a point; thence S23°27'54"E, 91.79 feet to a point; thence S04°11'28"E, 71.90 feet to a point; thence N32°09'11"W, 59.67 feet to a point; thence N67°16'56"W, 80.99 feet to a point; thence S88°20'19"W, 50.30 feet to a point; thence N09°51'08"E, 75.64 feet to a point; thence N49°49'36"E, 46.92 feet to the point of beginning, containing 13,756 square feet / 0.32 acres, more or less.

LITTORAL SHELF EASEMENT AREA 2

Beginning at an iron pipe in the eastern right-of-way of Cary Glen Boulevard, said iron pipe being located approximately 358' north of the centerline intersection of Walford Way; thence N72°59'58"E, a distance of 68.36 feet to a point; thence S83°48'32"E, 49.90 feet to a point; thence S67°08'01"E, 84.01 feet to a point; thence S58°14'46"E, 69.09 feet to a point; thence S84°45'07"W, 59.08 feet to a point; thence N90°00'00"W, 43.24 feet to a point; thence S83°20'30"W, 54.22 feet to a point; thence S76°25'05"W, 85.33 feet to a point; thence S63°26'44"W, 79.98 feet to a point; thence S58°55'13"W, 74.63 feet to a point; thence N28°10'02"E, 76.00 feet to a point; thence N43°03'49"E, 127.85 feet to the point of beginning, containing 22,730 square feet / 0.52 acres, more or less.

LITTORAL SHELF EASEMENT AREA 3

Beginning at an iron pipe in the eastern right-of-way of Cary Glen Boulevard, said iron pipe being located approximately 358' north of the centerline intersection of Walford Way; thence N12°42'43"W, a distance of 78.56 feet to a point; thence S75°38'45"E, 45.04 feet to a point; thence S66°40'32"E, 77.94 feet to a point; thence S62°28'35"E, 76.14 feet to a point; thence S56°06'06"E, 101.10 feet to a point; thence S55°05'54"E, 99.01 feet to a point; thence S82°53'29"W, 127.48 feet to a point; thence S88°27'47"W, 57.75 feet to a point; thence N77°31'36"W, 96.82 feet to a point; thence N25°12'27"W, 121.60 feet to the point of beginning, containing 34,950 square feet / 0.80 acres, more or less.



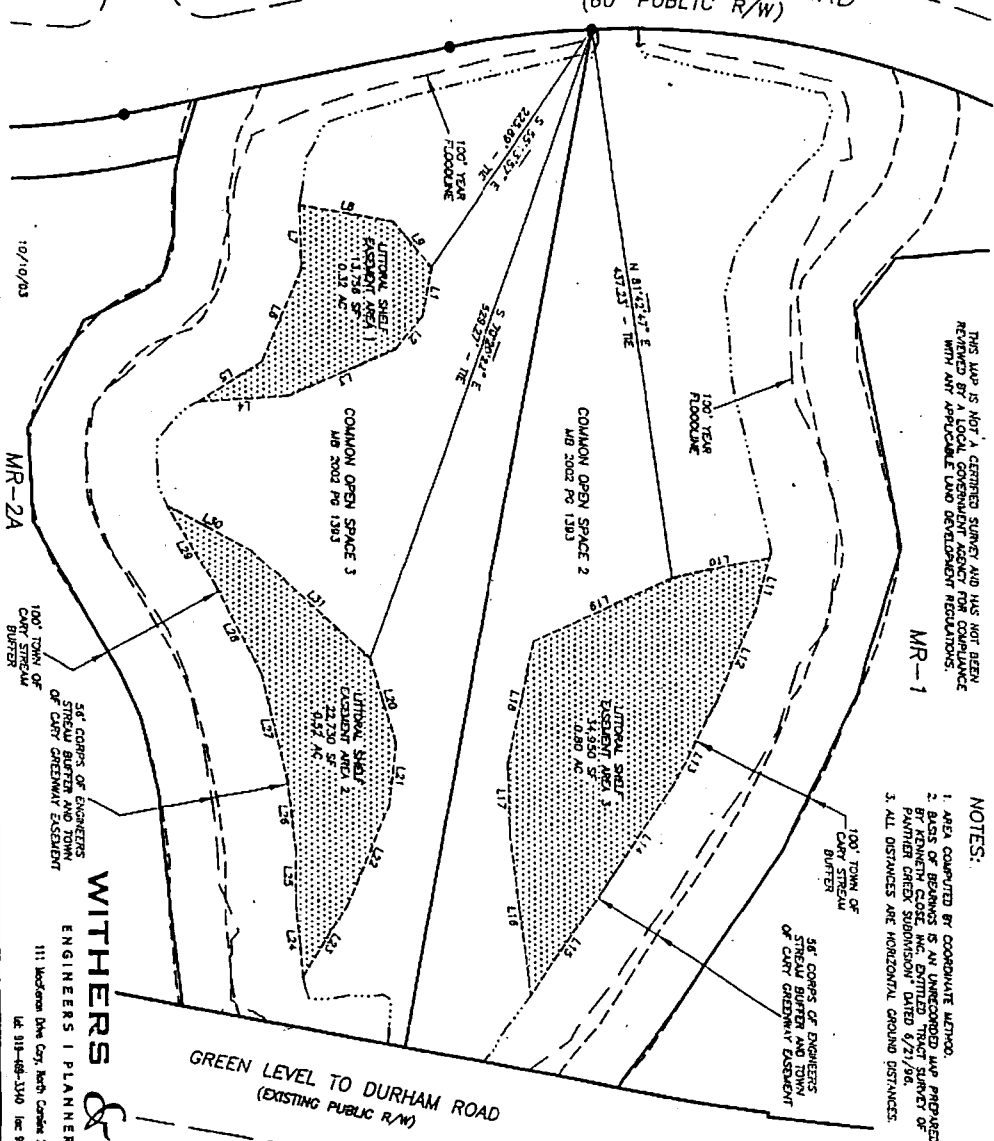
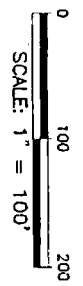
AREA SUMMARY

TOTAL 56' USACOE BUFFER	12.57 AC.
LITORAL SHELF EASEMENT	1.64 AC.
TOTAL	14.21 AC.
GREENWAY EASEMENT/ UTILITY EASEMENT WITHIN USACOE BUFFER	6.30 AC.
NET USACOE BUFFER	7.91 AC.

NOT A CERTIFIED SURVEY AND HAS NOT BEEN
REVIEWED BY ANY STATE AGENCY
REVIEWING PROFESSIONAL LAND DEVELOPMENT REGULATIONS

EXHIBIT A-1

LINE	DIRECTION	DISTANCE
L1	S 79°28'37" E	40.01'
L2	S 50°41'25" E	34.63'
L3	S 23°27'54" E	91.79'
L4	S 04°11'28" E	71.90'
L5	N 32°09'11" W	59.67'
L6	N 67°16'56" W	60.99'
L7	S 60°20'19" W	50.30'
L8	N 09°51'09" E	75.64'
L9	N 49°49'36" E	46.92'
L10	N 12°42'43" W	78.56'
L11	S 75°38'45" E	45.04'
L12	S 66°40'32" E	77.94'
L13	S 67°28'35" E	76.14'
L14	S 60°06'06" E	101.10'
L15	S 53°03'54" E	99.01'
L16	S 62°31'29" W	127.48'
L17	S 89°21'47" W	57.75'
L18	N 77°31'36" W	96.82'
L19	N 29°12'27" W	121.60'
L20	N 26°59'59" E	69.35'
L21	S 83°48'37" E	49.90'
L22	S 67°08'01" E	84.01'
L23	S 59°14'46" E	69.09'
L24	S 84°43'07" W	59.08'
L25	N 92°06'00" W	41.24'
L26	S 63°40'30" W	54.22'
L27	S 76°23'05" W	65.33'
L28	S 67°28'44" W	79.98'
L29	S 50°56'13" W	74.63'
L30	N 28°10'02" E	76.00'
L31	N 45°01'49" E	127.95'



THIS MAP IS NOT A CERTIFIED SURVEY AND HAS NOT BEEN REVIEWED BY A LOCAL GOVERNMENT AGENCY FOR COMPLIANCE WITH ANY APPLICABLE LAND DEVELOPMENT REGULATIONS.

- NOTES:
1. AREAS COMPUTED BY COORDINATE METHOD.
 2. BASIS OF BEARINGS IS AN UNRESERVED AND ADJUSTED PLANNING GREEN SUBMISSION DATED 6/21/96.
 3. ALL DISTANCES ARE HORIZONTAL GROUND DISTANCES.

WITHERS & RAVENEL
 ENGINEERS | PLANNERS | SURVEYORS
 111 Welford Drive Corp. North Carolina 27511 www.wit-rav.com
 Tel: 919-469-3340 Fax: 919-467-1000

