

**Back Creek Stream and Wetland Restoration
EEP Project No. 17
Closeout Summary Report
2011**



May 2011

Prepared for:

NCDENR-EEP
1652 Mail Service Center
Raleigh, NC 27699

Prepared by:

Jordan, Jones and Goulding
309 East Morehead Street, Suite 110
Charlotte, NC 28202



Project ID & Status	
<u>Project Name and Number:</u>	Back Creek
<u>EEP ID:</u>	17
<u>County:</u>	Mecklenburg
<u>Project Type:</u>	Stream and Wetland Restoration
<u>Current Status:</u>	5 Years of Monitoring Complete

Project Setting & Background	
<u>Basin</u>	Yadkin PeeDee
<u>Physiographic Region</u>	Piedmont
<u>Ecoregion</u>	Southern Outer Piedmont
<u>USGS 8-digit HUC</u>	03040105
<u>NCDWO Subbasin</u>	CTB31
<u>Drainage Area</u>	4.1 mi ²
<u>Impervious Cover</u>	~20%
<u>Thermal Regime</u>	warm
<u>Trout Water</u>	No
<u>Designer</u>	EcoScience Corporation
<u>Monitoring Firm</u>	Jordan, Jones and Goulding

Project Timeline	
<u>Milestone</u>	<u>Date</u>
Institution Date	May 2002
Mitigation Plan	Jan 2003
404 Permit Date	Aug 2004
Construction Completed	December 2005
Planting Completed	Feb 2006
Monitoring Year-1	Sep 2006
Monitoring Year-2	Nov 2007
Monitoring Year-3	Nov 2008
Monitoring Year-4	Nov 2009
Monitoring Year-5	Dec 2010

Project Component or Reach ID	Restoration Level	Approach	Stationing	Footage	Credible Footage	Acreage	Credible Acreage	Mitigation Ratio	Mitigation Units	Comment
Mainstem	R	P1/P2	00+00 - 33+07	3307	3187			1:1	3187	120 feet of mainstem ineligible - in I-485 ROW yielding 3187 of credible footage
Upstream Trib.	R	P2	0+00 - 4+11	411	327			1:1	327	84 feet of channel at top of trib exists as rip rap yielding 327 feet of credible footage
Central Trib.	R	P3	0+00 - 3+59	359	323			1:1	323	36 feet of channel at top of trib exists within I-485 ROW yielding 323 feet of credible footage
Wetland Enhancement	E					3.2	3.2	2:1	1.6	Planting
Wetland Restoration	R					0.44	0.44	1:1	0.44	Planting and improved floodplain connection
Summations				4077	3837	3.64	3.64			

R = Restoration
 E = Enhancement
 P1, P2, P3 = Rosgen Priority Restoration Level

 Non-Applicable

**Table 2. Asset Summations
Back Creek (EEP ID# 17)**

Restoration Level	Stream (lf)	Riparian Wetland (Ac)
Restoration	3837	0.44
Enhancement		3.2
Totals (Feet/Acres)	3837	3.64
MU Totals	3837	2.04

Non-Applicable 

Project Background and Summary

The Back Creek Stream and Wetland Restoration Project (Site) is a 17.5 acre lot located in Mecklenburg County, North Carolina, northeast of the City of Charlotte (Figure 1). Back Creek drains approximately 4 square miles and is located within the Piedmont Ecoregion in the Yadkin-Peedee River Basin (USGS HUC 03040105). The project was transferred from NCDOT to the North Carolina Ecosystem Enhancement Program (NCEEP) in 2006. Construction of the restoration project was completed in December 2005 and planting occurred in February 2006. Historically, the Site was utilized for livestock grazing and agricultural hay production. The site was dominated by fallow, successional fields and a few stands of isolated hardwoods. Sewer line construction and past land use had impaired the stream's stability due to dredging and straightening of the upstream reach. Urban development in the watershed also contributed to the instability of the Site. See Addenda 1 for information related to watershed planning efforts and Addenda 3 for information related to property protection.

The project restored a total of 4,077 linear feet: 3,307 lf in the main channel, 411 lf in the upper tributary, and 359 lf in the lower tributary. The total creditable footage was reduced by a total of 120 lf in the main channel and 36 lf in the central tributary because these lengths are in the I-485 right-of-way. The upper tributaries creditable footage total was also reduced by 86 feet due to the fact that the channel was ripped in this section. The final creditable footage was 3,837 linear feet: 3,187 lf in the main channel, 327 lf in the upper tributary, and 323 lf in the central tributary. Tables 1 and 2 below and the asset debit ledger in Addendum 2 provide project asset tallies and summations.

Goals and Objectives - The asset amounts cited above were the proposed amounts. The amounts realized are described above.

- To restore historic stream and wetland functions which likely existed on-site prior to channel dredging/straightening, bank hardening and vegetation removal.
- Restore approximately 3,525 linear feet (lf) of Back Creek.
- Restore approximately 827 lf of tributaries to Back Creek.
- Restore approximately 1.5 acres (ac) of jurisdictional wetland, enhance approximately 1.8 ac of jurisdictional wetland, and create approximately 0.5 ac of open water/freshwater marsh adjacent to on-site channels. It was later determined that 0.44 ac of wetland restoration and 3.2 ac of wetland enhancement was a more attainable goal.
- Reforest approximately 17.5 ac of flood prone area and adjacent upland slopes with native forest species.

Success Criteria

Stream

- Classification of the stream as a stable stream type (e.g. C/E types, etc.)
- Maintain low bank height ratios and good floodplain connection as indicated by morphological monitoring and overbank flooding
- Limited erosion of bed and banks
- General coarsening of the bed in riffles such that coarse sand to fine gravel is maintained
- Stability of stream structures

Wetland Hydrology

- Continuous saturation within 12 inches of the ground surface or inundation for at least 12.5% of the 241 day growing season.

Vegetation

- Average density of 320, 290 and 260 stems per acre for monitoring years 3, 4 and 5, respectively

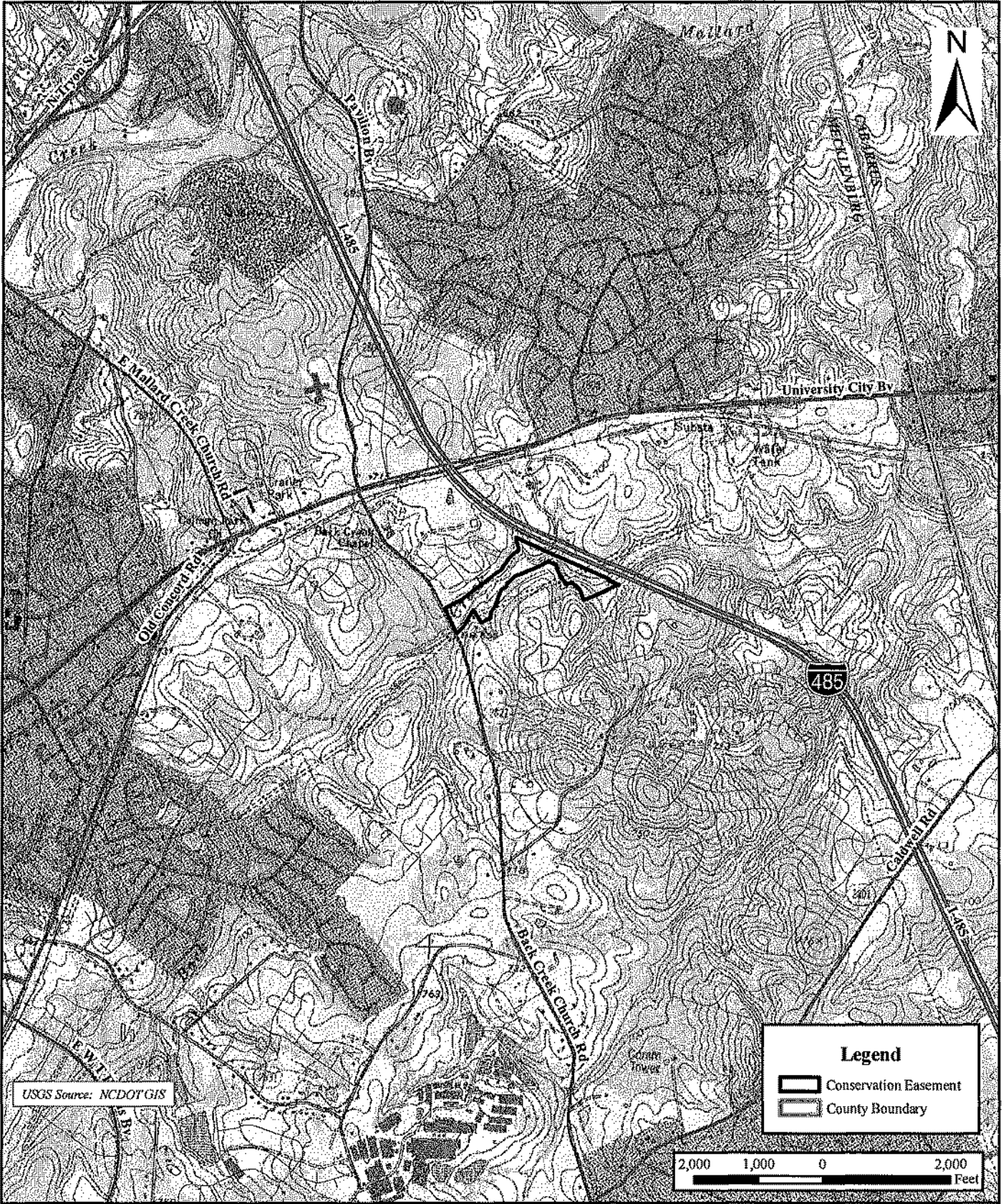
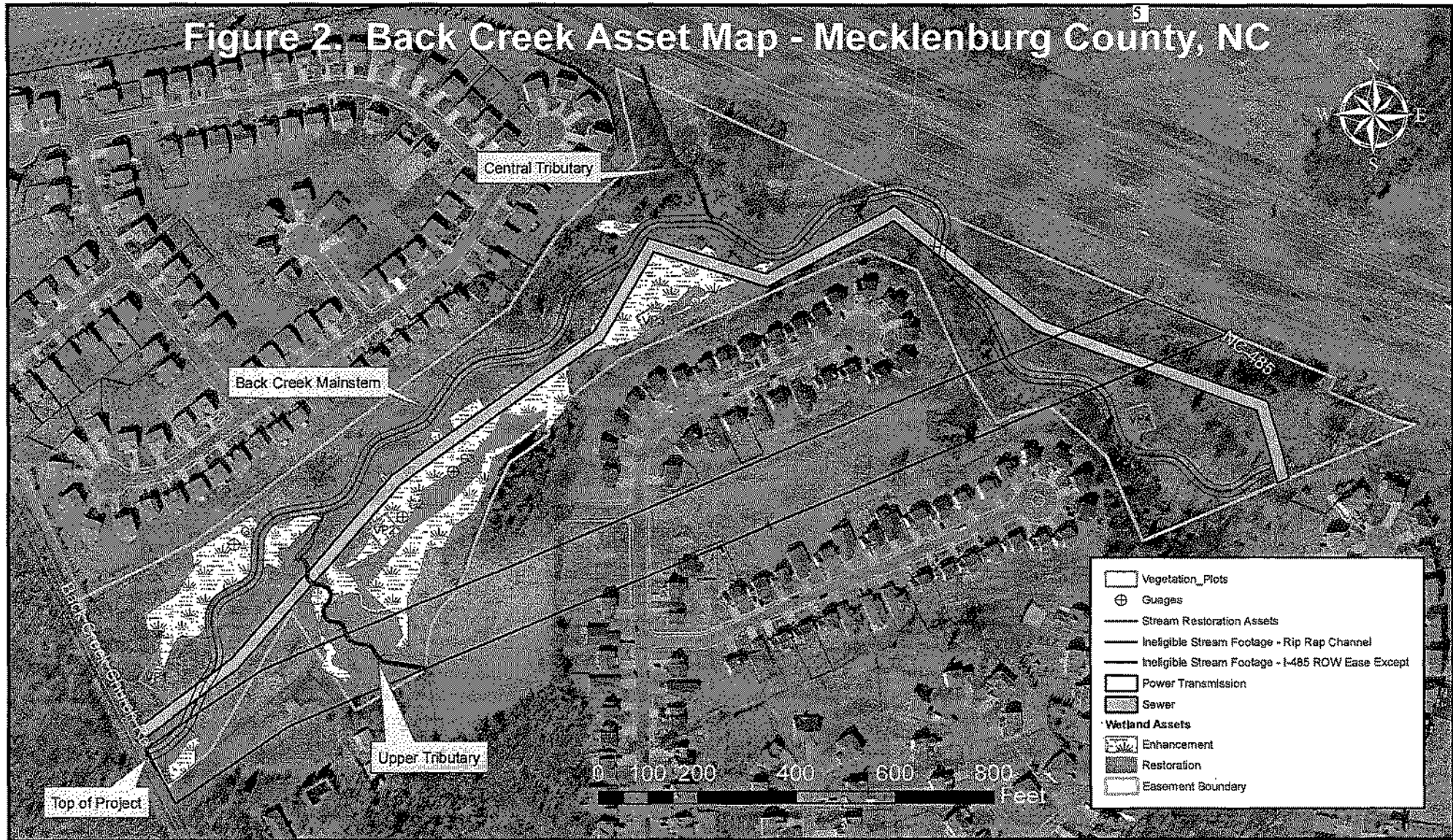


Figure 1 Project Vicinity Map
 Back Creek Stream and Wetland Restoration/EEP Project No. 17
 Mecklenburg County, NC
 May 2011



5
Figure 2. Back Creek Asset Map - Mecklenburg County, NC





Aerial Photo Source: Mecklenburg County Land Use and Environmental Services, March 2004



NOTES:
 1. GENERAL SITE DATA PROVIDED BY NCEP.
 2. ALL LOCATIONS ARE APPROXIMATE.

EEP PROJECT NO. 17
 MECKLENBURG COUNTY,
 NORTH CAROLINA
 MONITORING YEAR 5 of 5

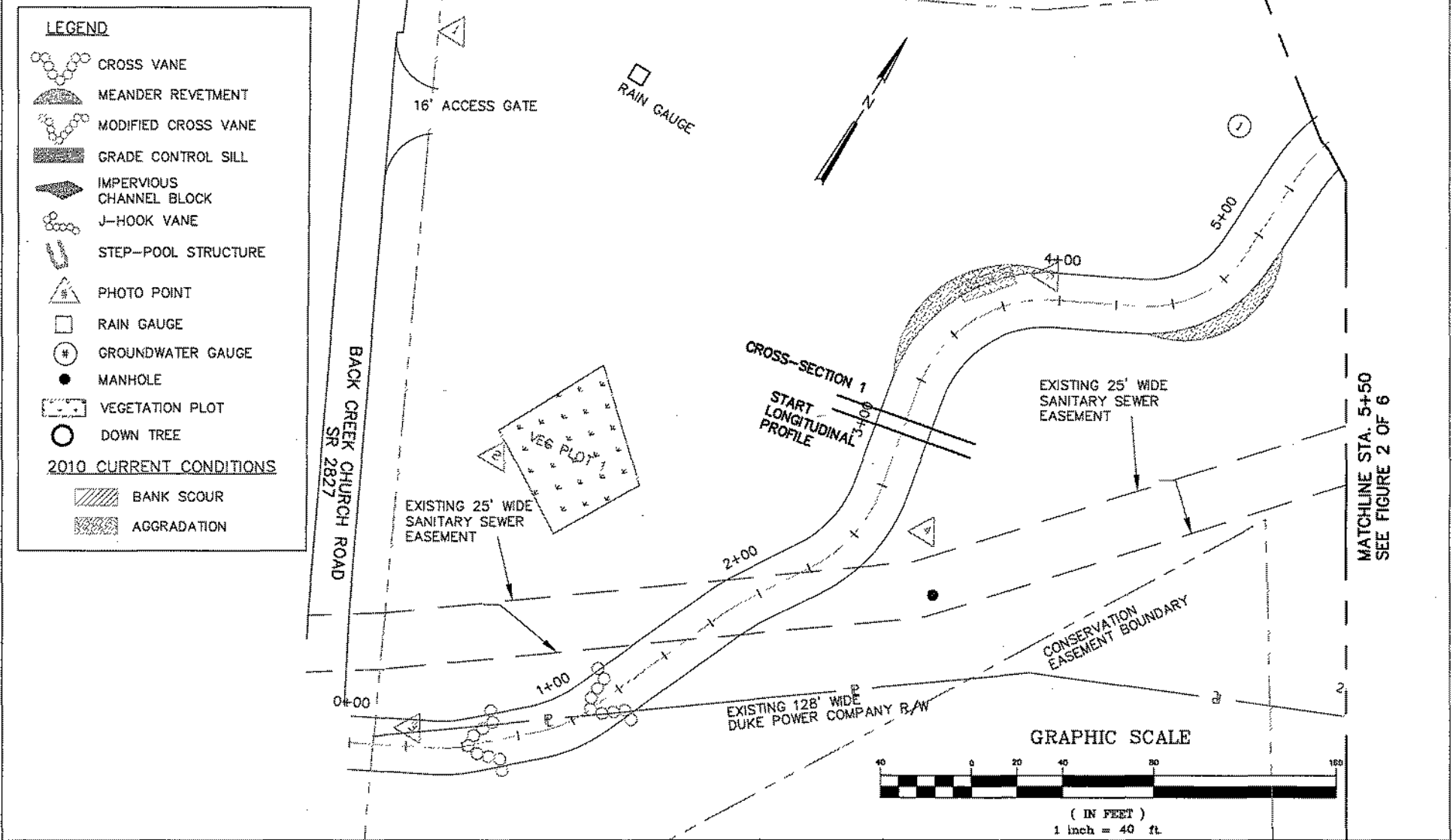


NC ECOSYSTEM ENHANCEMENT PROGRAM
 BACK CREEK STREAM AND WETLAND RESTORATION

DATE : MAY 2011
 SCALE : 1"=200'
 JOB NO.: JJX31100

APPENDIX 1.2
 CURRENT CONDITION PLAN VIEW

FIGURE KEY



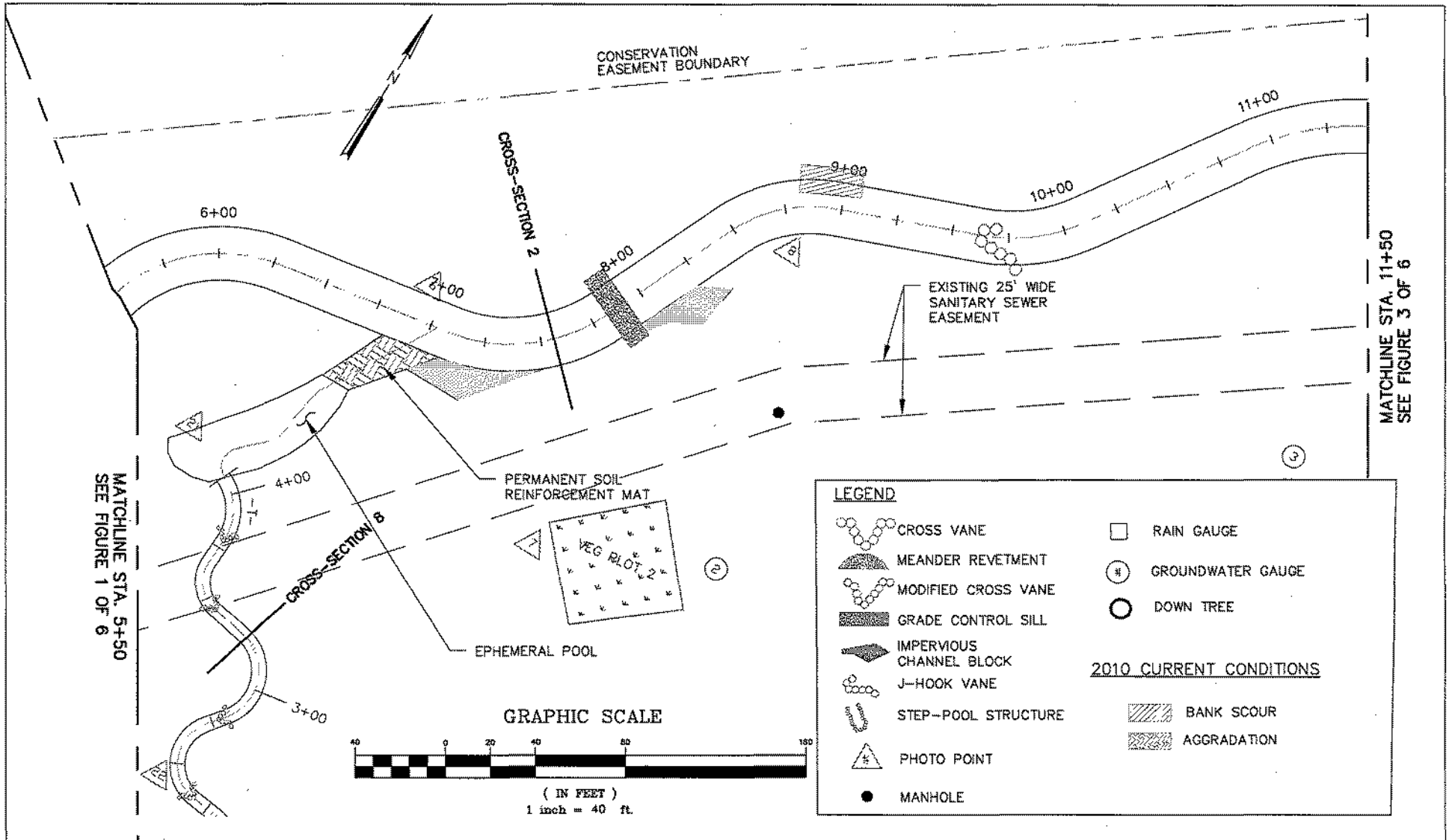
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 MONITORING YEAR 5 of 5



NC ECOSYSTEM ENHANCEMENT PROGRAM
 BACK CREEK STREAM AND WETLAND RESTORATION
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 CURRENT CONDITION PLAN VIEW

DATE : MAY 2011
 SCALE : 1"=40'
 JOB NO.: JJX31100
 FIGURE 1 OF 6



MATCHLINE STA. 5+50
SEE FIGURE 1 OF 6

MATCHLINE STA. 11+50
SEE FIGURE 3 OF 6

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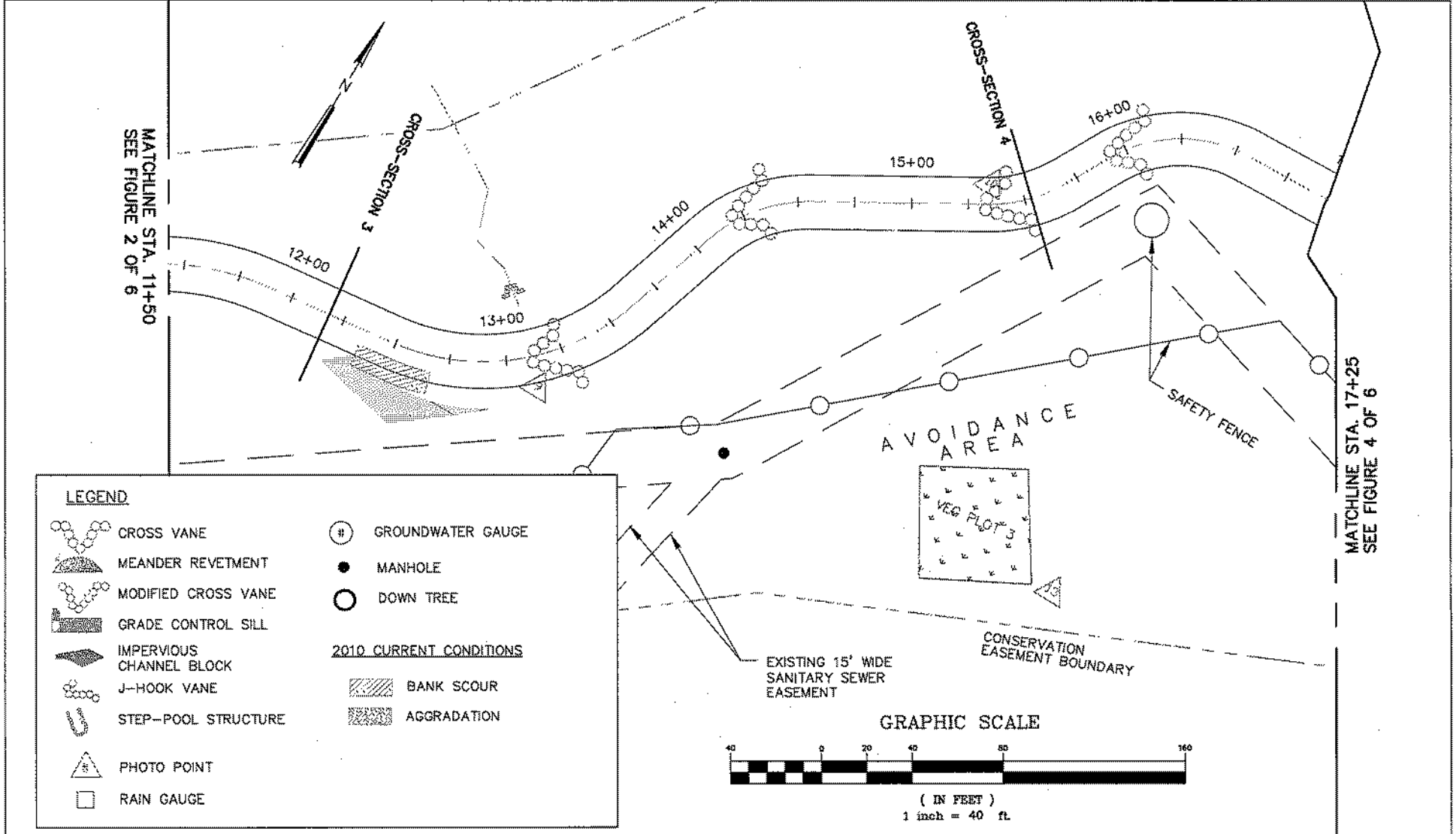
NC ECOSYSTEM ENHANCEMENT PROGRAM
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FIGURE 2 OF 6





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ECP PROJECT NO. 17
 MECKLENBURG COUNTY,
 NORTH CAROLINA
 MONITORING YEAR 5 of 5

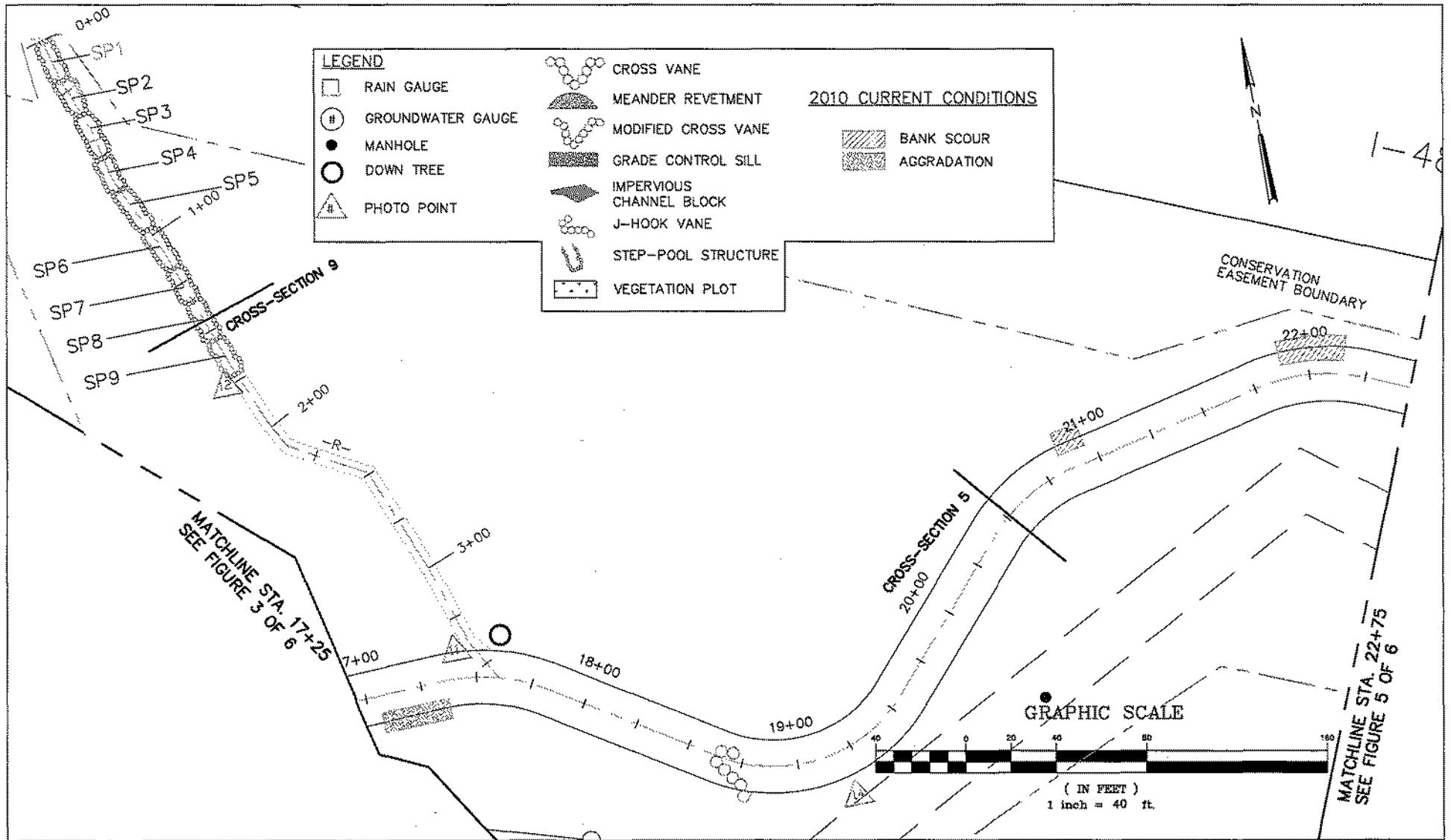


NC ECOSYSTEM ENHANCEMENT PROGRAM
 BACK CREEK STREAM AND WETLAND RESTORATION

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FIGURE 3 OF 6



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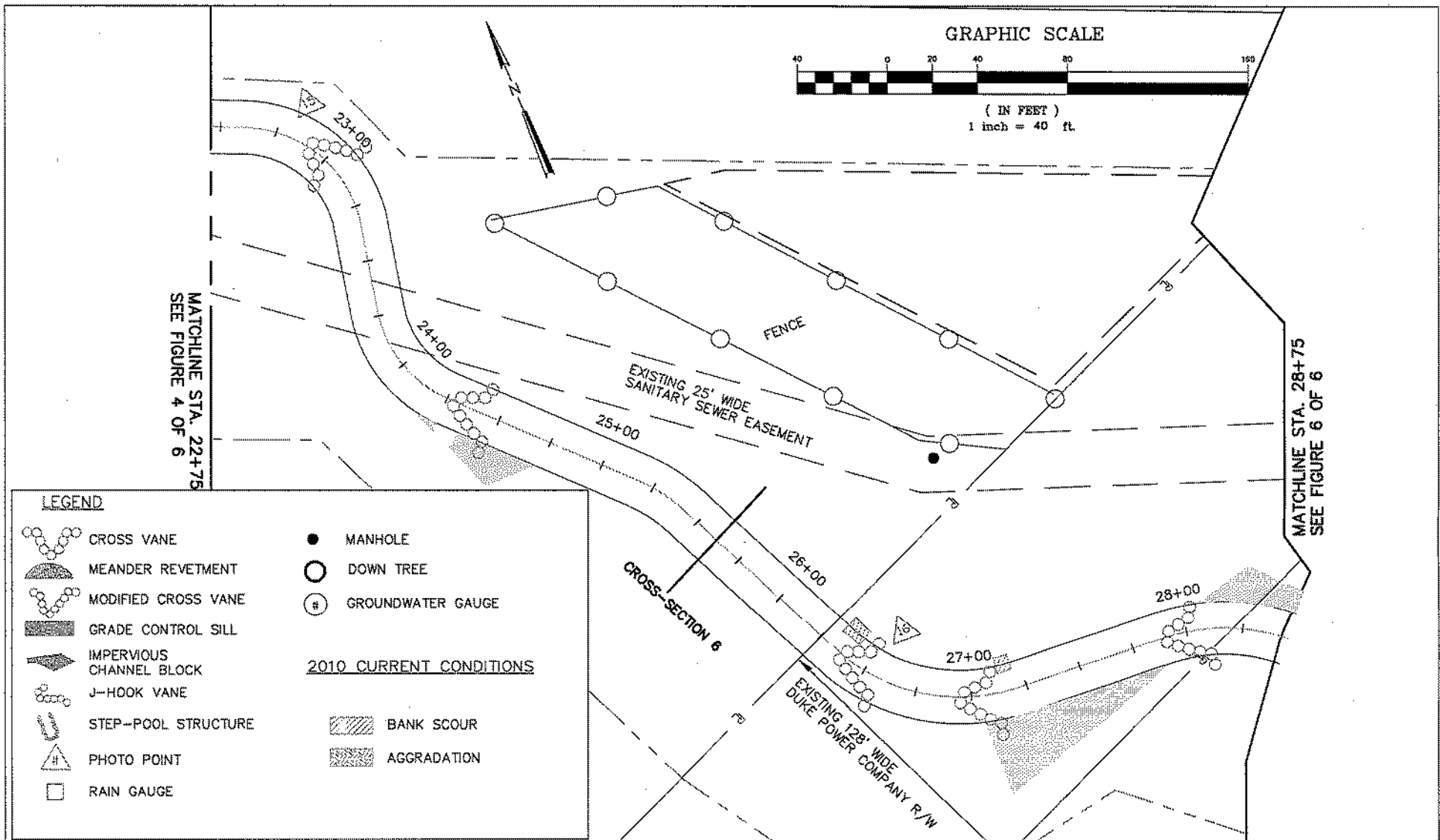


NC ECOSYSTEM ENHANCEMENT PROGRAM
BACK CREEK STREAM AND WETLAND RESTORATION

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JOB NO.: JUX31100

FIGURE 4 OF 6



LEGEND

	CROSS VANE		MANHOLE
	MEANDER REVETMENT		DOWN TREE
	MODIFIED CROSS VANE		GROUNDWATER GAUGE
	GRADE CONTROL SILL	2010 CURRENT CONDITIONS	
	IMPERVIOUS CHANNEL BLOCK		BANK SCOUR
	J-HOOK VANE		AGGRADATION
	STEP-POOL STRUCTURE		
	PHOTO POINT		
	RAIN GAUGE		

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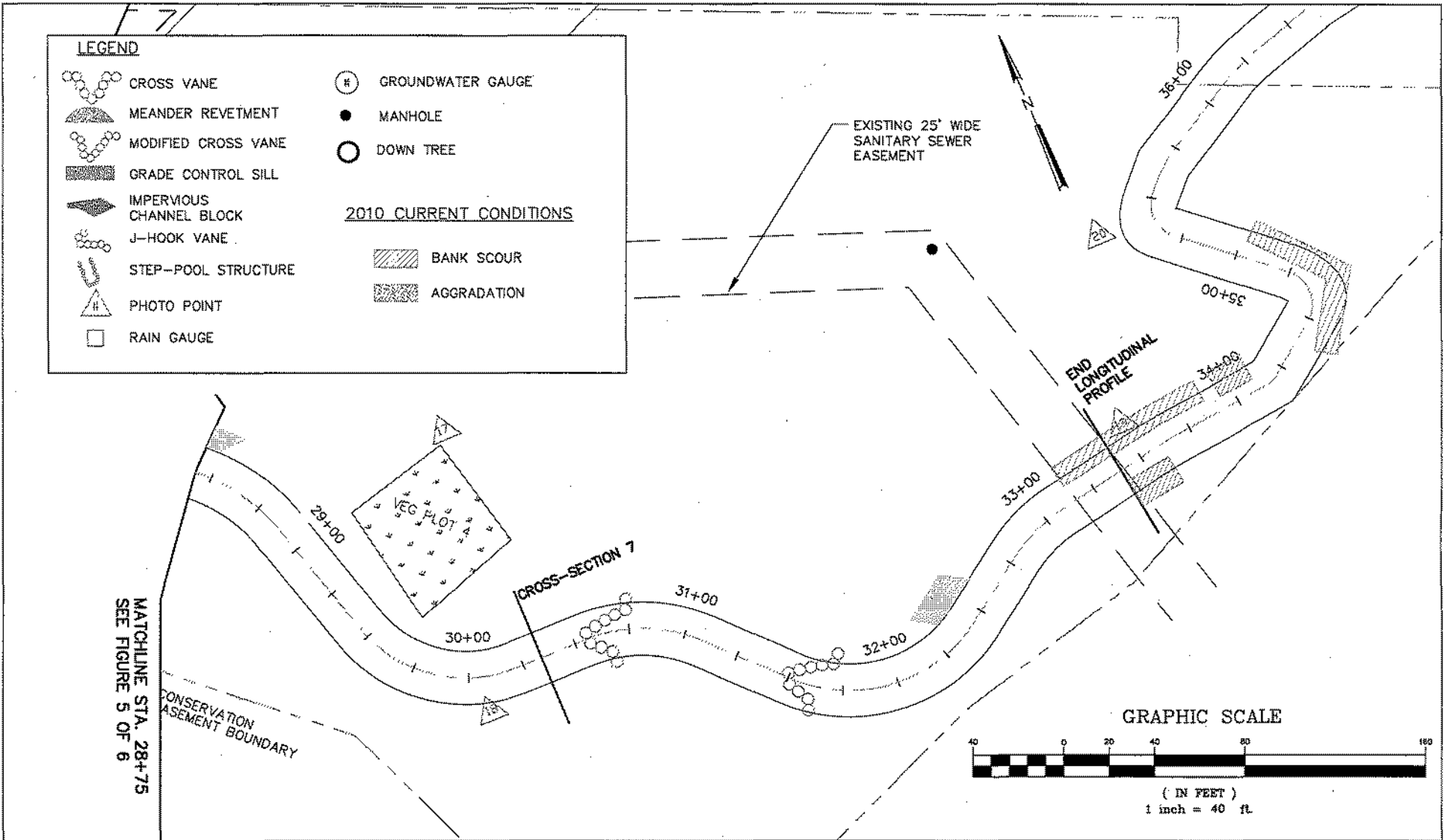
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FIGURE 5 OF 6





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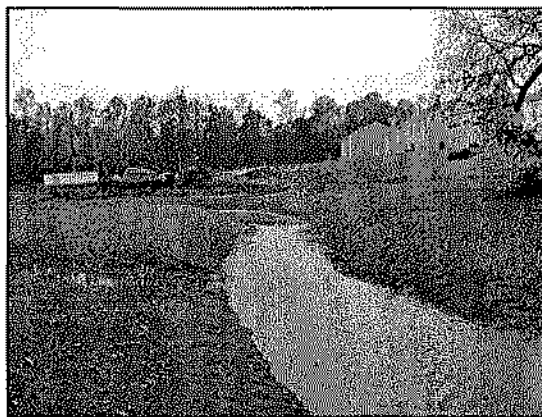
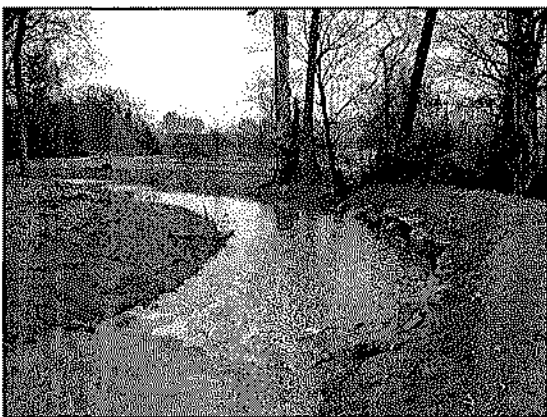
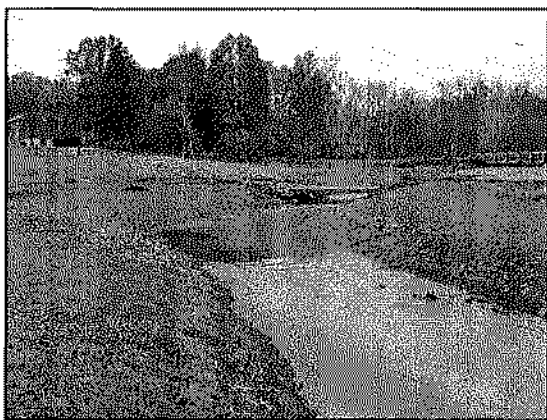
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FIGURE 6 OF 6

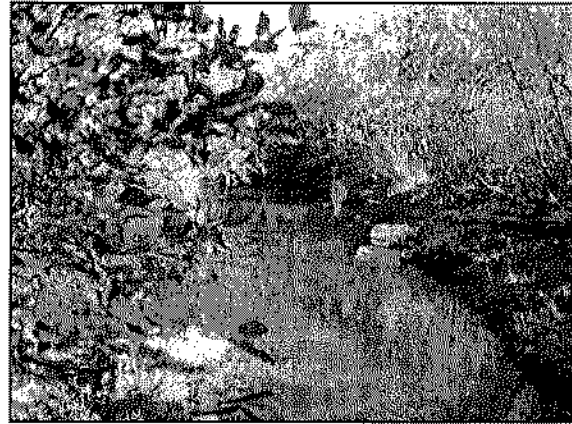
Construction Site Photos



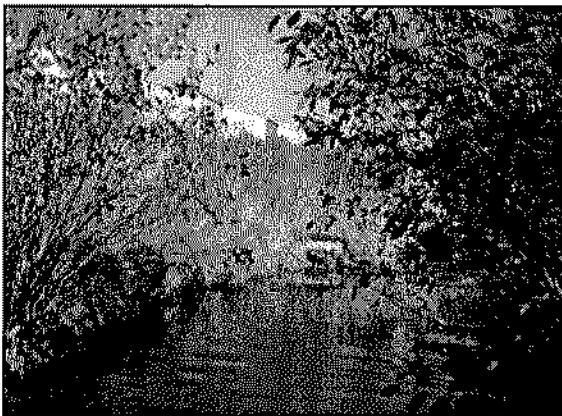
Monitoring Year 05 Site Photos



MY 05 Photo Point 4 – Downstream (11/2010)



MY 05 Photo Point 6 – Downstream (11/2010)



MY 05 Photo Point 8 – Downstream (11/2010)



MY 05 Photo Point 9 – Upstream (11/2010)



MY 05 Photo Point 11 – Downstream (11/2010)



MY 05 Photo Point 16 – Upstream (11/2010)

Morphology and Substrate Data

To assess the morphological performance of the restoration project, a total of nine cross sections were established. Seven of the cross sections were established along the main channel and one cross section was established along both the upstream tributary and the central tributary. Stream pattern, profile, dimension, and substrate were evaluated along 3,100 lf of the main channel through qualitative visual assessment and qualitative cross-section and longitudinal profile surveys. The upstream and central tributaries were evaluated through visual assessments and cross-sectional surveys. Following is a discussion regarding the status of each channel.

Main Channel

The pattern, profile, and dimension of the restored main channel appear stable for the majority of the project. The structures appear to be in satisfactory condition; however, a few structures exhibit moderate scour where vane arms tie into the bankfull elevation. Instances of localized bank scour recorded early in the monitoring history were sporadic and generally have not advanced. Streambank stability percentages were calculated at or above 95 percent for the project's monitoring history, indicating a stable reach. A few areas experiencing bank scour were considered severe and were associated with some mid and transverse channel sediment bars that have subsequently flushed out of the system. Vegetation growth has improved in previous scoured areas and is now stabilizing previous bank scour. One (1) area within the restored reach continues to illustrate signs of aggradation (approximate stationing 19+93), but there has been no significant changes to the extent of the issue within the past few monitoring periods.

The cross-section overlays indicated dimensional stability in riffles, and although some pools exhibited filling earlier on in relation to beaver, they subsequently scoured to their original depths after the beaver were removed. The surveyed bankfull widths and depths lead to an average Width/Depth (W/D) ratio of 16.24. Sinuosity was determined to be 1.5. The W/D ratio (16.24) is typical of a C-type channel, but the sinuosity (1.5) is typical of an E-type channel. Therefore, due to these defining characteristics for the 2010 monitoring year, the stream was classified as an E4c. The average W/D ratio (13.65) has decreased since the 2006 monitoring year (18.52) indicating that the channel is becoming more narrow and deep, which is typical for E-type streams.

Analysis of substrate particle distribution over the five year monitoring period illustrates that all of the cross sections within the restoration reach are recovering from the drought conditions and beaver activity experienced in previous monitoring years. Average reach-wide particle size has increased significantly from previous years, indicating fine material from early erosion and detention from beaver activity, are being moved through the system. The thalweg profile appears to be stable, and was characterized by well-defined riffle and pool bed features. The average water surface slope and the average bankfull slope were the same for the surveyed reach, 0.0040 ft/ft. The surveyed water surface slope was slightly steeper than the proposed 0.0034 ft/ft but similar to the previous monitoring year surveyed slopes.

A crest gauge is located just downstream of Cross Section 6 within the Back Creek project site. One bankfull or greater event occurred within the project in monitoring year 2010. Other indicators such as wrack lines and water staining were observed at the bankfull and greater elevations within the restoration site as well. The project reach has exhibited good floodplain access over the monitoring period.

Date of Collection	Date of Occurrence	Method
Summer/Fall 2006	9/13/06	Visual Assessment
10/9/2007	Unknown	Crest Gauge
8/19/2008	Unknown	Crest Gauge
7/15/2009	Unknown	Crest Gauge and Visual Assessment
11/18/2009	11/11/2009- 11/12/2009	Crest Gauge and Visual Assessment
11/19/2010	11/8/2009- 11/12/2010	Crest Gauge and Visual Assessment

Overall, the channel is performing well and continues to trend towards a stable equilibrium. Minor areas of instability do not appear to be having adverse effects and continue to stabilize as vegetation advances. The narrowing trend of the channel is likely due, in part, to the maturing vegetation along the banks and vegetation induced lateral accretion during storm events. The majority of streambanks are stable, and in-stream structures are holding grade and providing adequate bank protection.

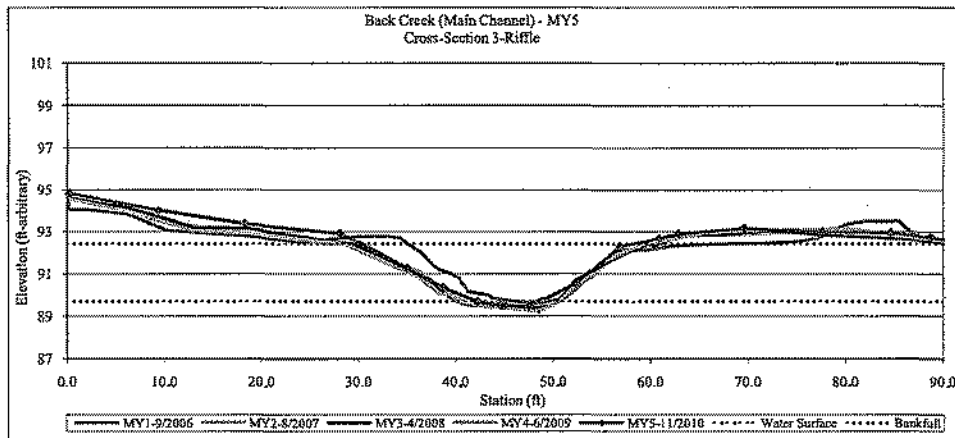
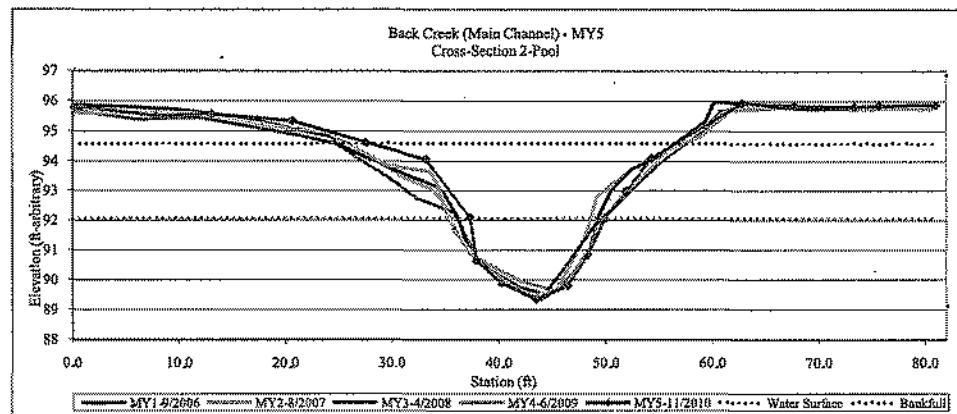
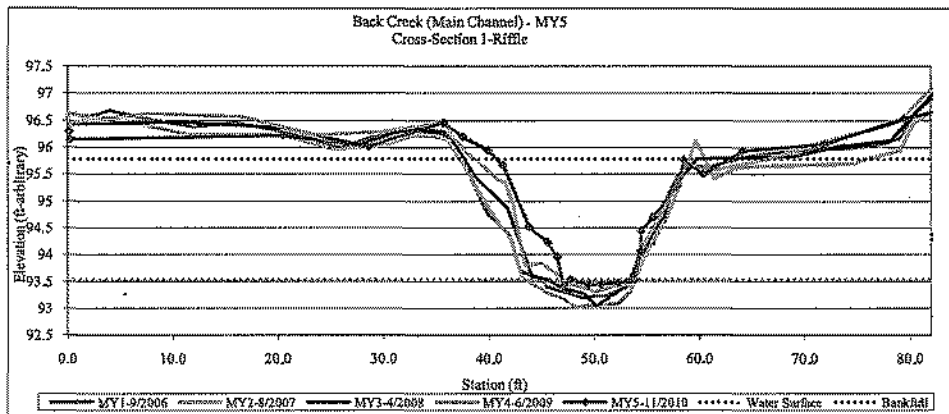
Upstream Tributary

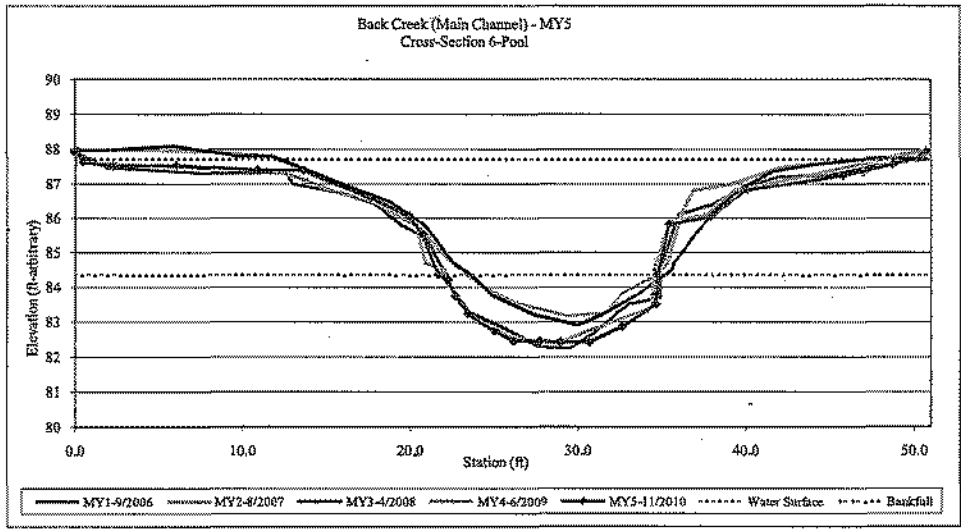
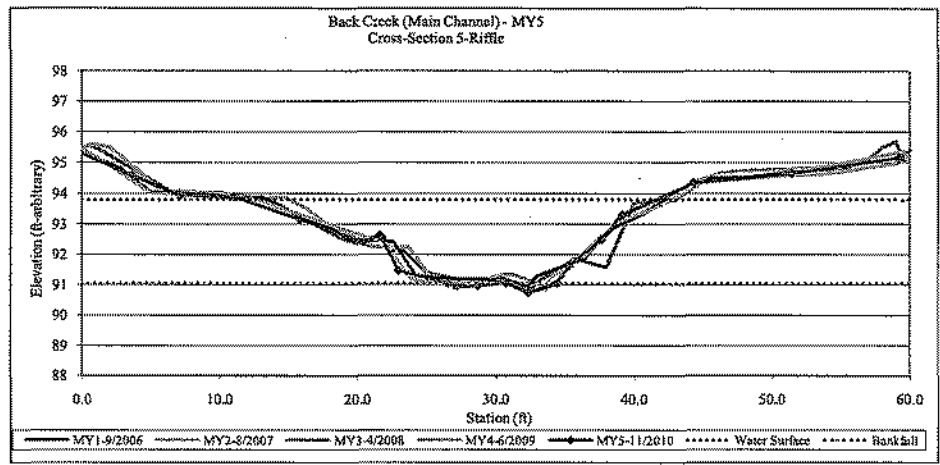
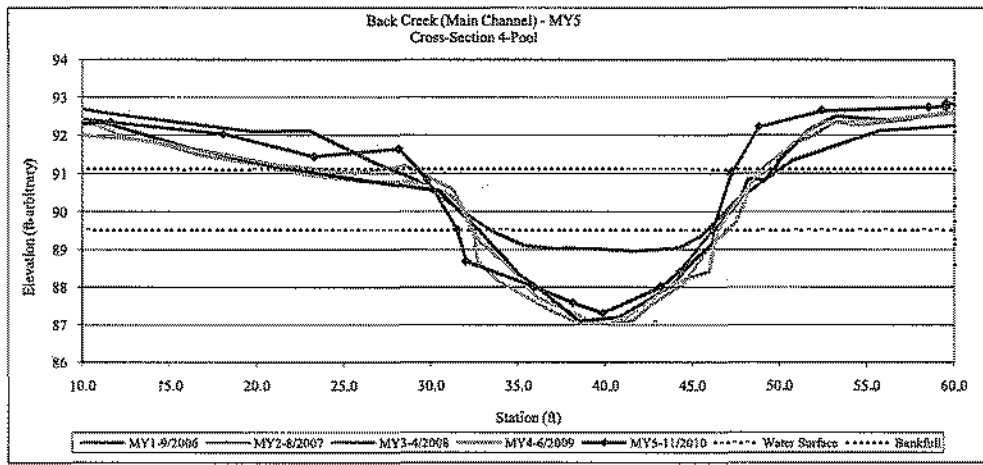
Based on current monitoring data and qualitative visual inspection, the upstream tributary channel appears to be functioning properly and maintaining stability. Streambanks and grade control structures have stabilized well and are functioning as intended. Only insignificant adjustments to cross sectional dimensions have occurred over the monitoring period, due to intermittent flow and well developed streambank vegetation (see Cross Section 8).

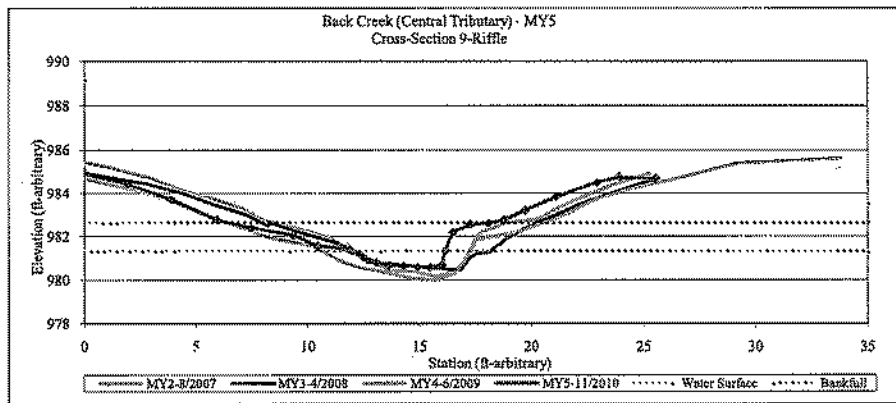
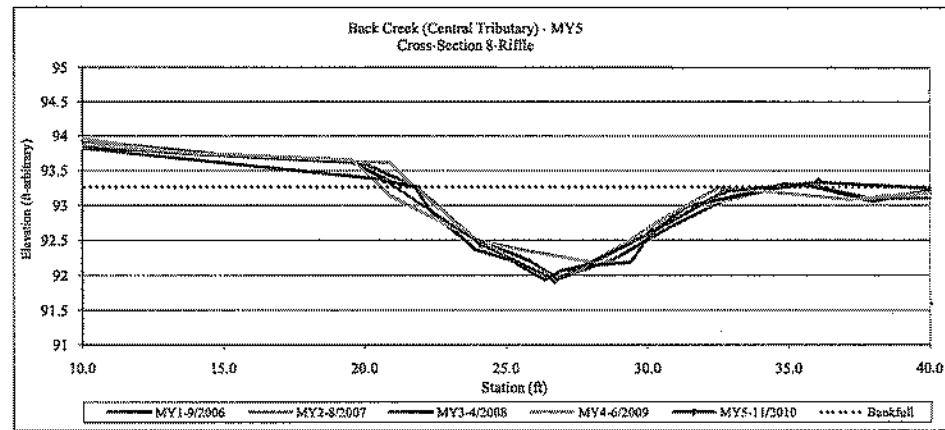
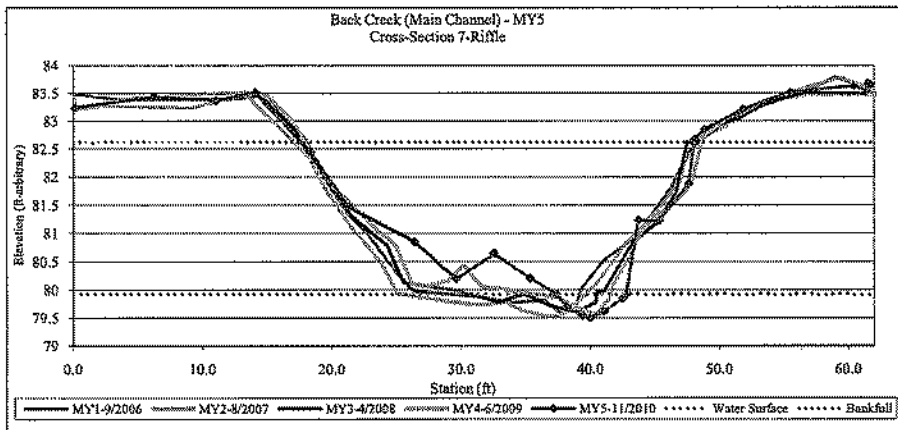
Central Tributary

The tributary appears to be maintaining its proposed function as a B-type channel. There are some areas with minor bank erosion, but no structural failure is occurring along this reach. Cross Section 9, which is located midway along the tributary, has remained vertically and laterally stable. Minor sediment deposition occurred in 2010, which resulted in a decrease in the cross-sections mean depth (1.04 ft) from previous monitoring year ranges (1.24-1.32 ft), but is not a reach-wide issue. The d50 and d84 particle size has decreased from 0.33 mm to 0.2 mm and 3.43 to 1.67, respectively. Most likely, these fine particles are due to the minor bank erosion upstream, which are expected to flush with future rain events. Minor bank erosion is also expected to stabilize and is not a reach-wide concern.

Overall, the site appears to be maintaining vertical and lateral stability with stable structures and minimal bank erosion. Qualitative and quantitative assessments of the project over a five year period indicate that the site is performing well and continues to trend towards a self-sustaining system.

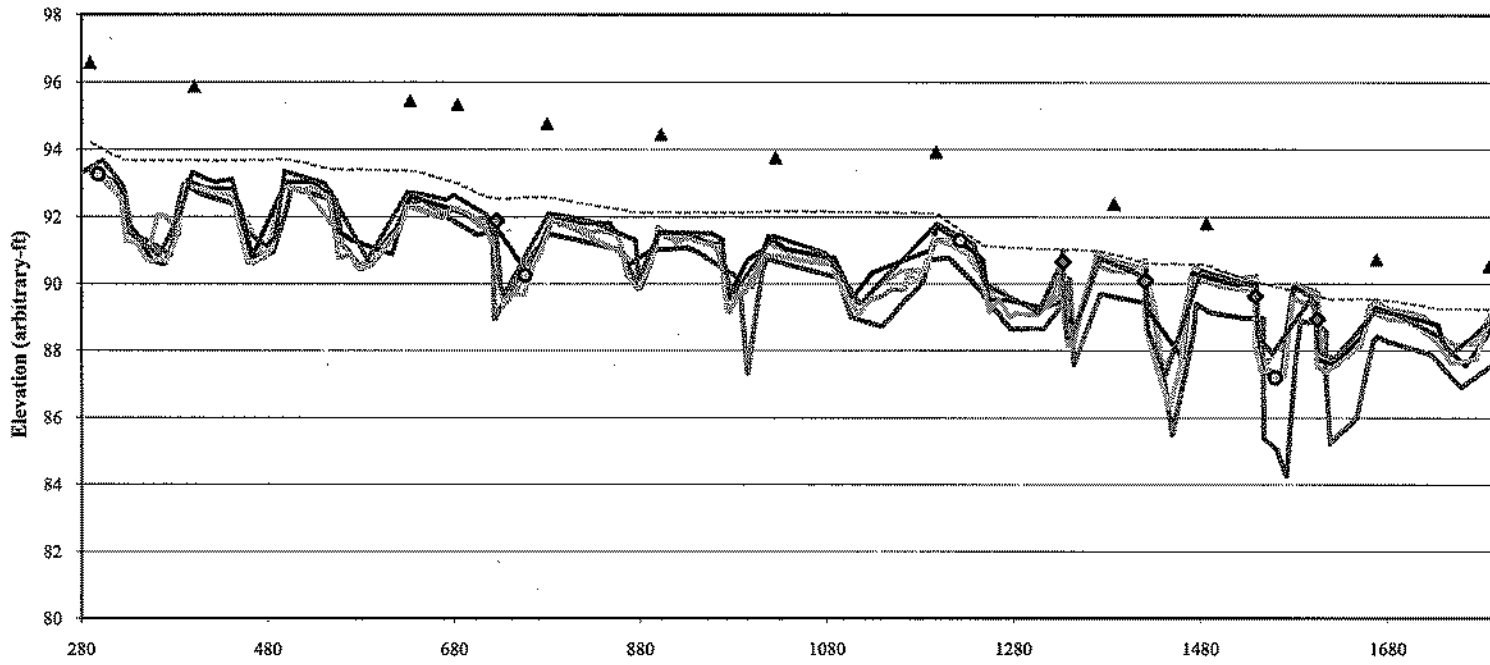




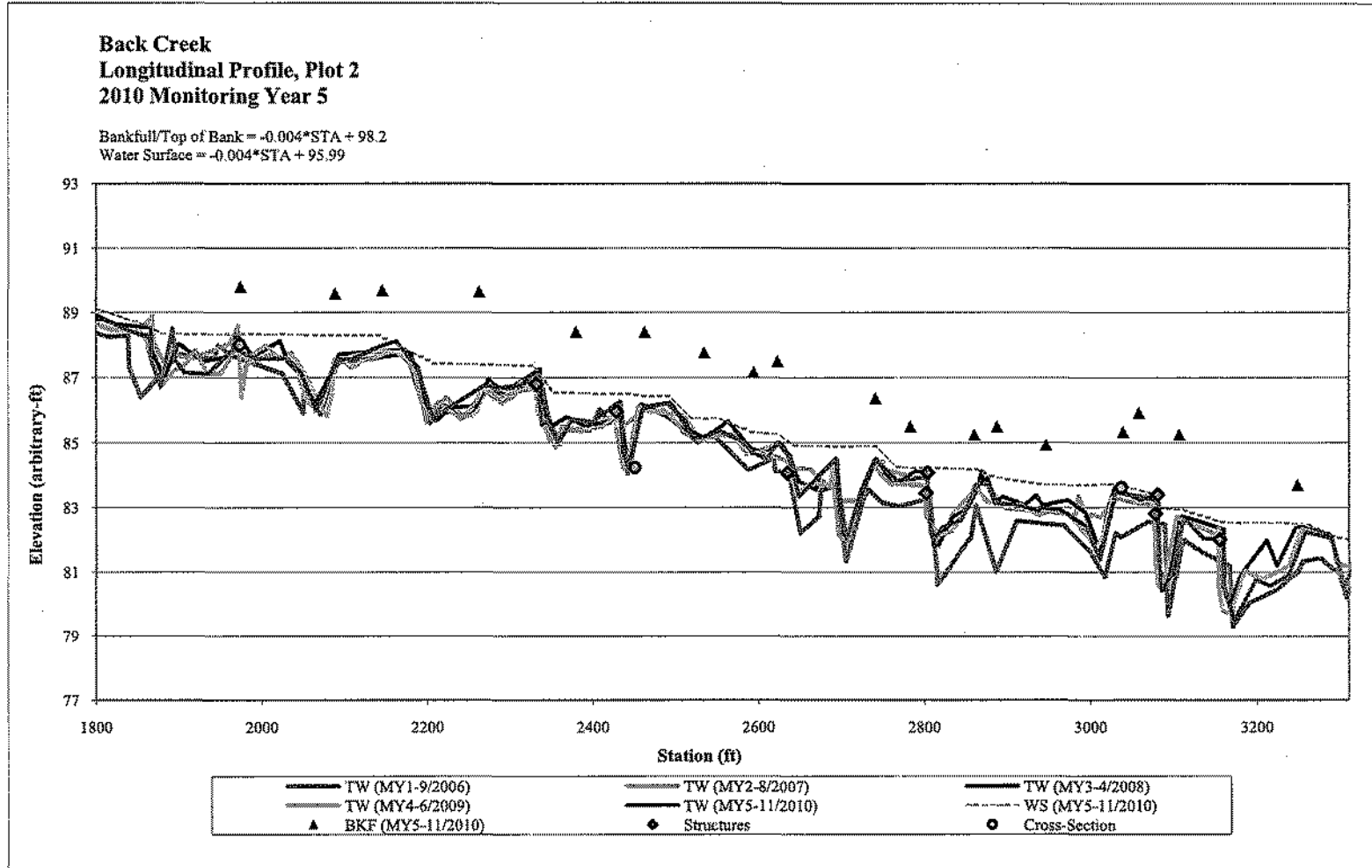


**Back Creek
Longitudinal Profile, Plot 1
2010 Monitoring Year 5**

Bankfull/Top of Bank = $-0.004 \cdot \text{STA} + 98.2$
Water Surface = $-0.004 \cdot \text{STA} + 95.99$



— TW (MY1-9/2006)	— TW (MY2-8/2007)	— TW (MY3-4/2008)	— TW (MY4-6/2009)	— TW (MY5-11/2010)
- - - WS (MY5-11/2010)	▲ BKF (MY5-11/2010)	◆ Structures	○ Cross-Section	



Vegetation Data

Prior to restoration activities, the site consisted of fallow and successional fields that were predominately devoid of deep-rooted vegetation. One of the primary goals of the project is to reforest approximately 17.5 acres of flood prone area and adjacent upland slopes with native vegetation. Assessment of vegetation success was conducted annually following the NCEEP 2004 Stem Counting Protocol, which consisted of quantifying woody stem density and survival within four previously established vegetation plots. The four vegetative plots were selected randomly to represent the riparian buffer zone. The planted vegetative community goal for these plots is to establish a Piedmont floodplain forest within flood prone areas.

The vegetation monitoring results indicate that the site is meeting vegetation success criteria. The site's average planted stem density is 364 stems per acre, which exceeds the year 5 goal of 260 stems per acre. One of the 4 vegetation plots (Plot 4) exhibited a planted density below the 260 stems/acre criterion, although with the onset of volunteers the stem count for this plot is now 404 stems per acre. The inclusion of volunteers produces a species count that ranges from 5-7 across the plots indicating generally good diversity.

The site has satisfied the vegetation success criteria requirements for the project. Some loss of streambank vegetation was evident in 2006; however, the overall growth of the streambank vegetation is satisfactory and continues to improve as evidenced over the past few monitoring years. The overall success of the woody vegetation monitored within three of the four plots appears to be better than what was initially assessed in September 2006. This is most likely due to the resprouting of suspected dead saplings and new volunteer species. Please refer to Table 4 for detailed information regarding the vegetation data.

Table 4. Vegetation History																					
Back Creek/EEP Project No. 17																					
Species	Common Name	Type	MY5-2010 Data								Annual Means										
			Plot 1		Plot 2		Plot 3		Plot 4		MY1-2006		MY2-2007		MY3-2008		MY4-2009		MY5-2010		
			P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	P	T	
<i>Quercus michauxii</i>	swamp chestnut oak	T	4	4	6	8	3	3	5	5	5	5	5	7	5	6	5	5	5	7	
<i>Fraxinus pennsylvanica</i>	green ash	T	6	17	8	12	7	7	7	7	8	8	8	17	8	17	8	8	8	17	
<i>Platanus occidentalis</i>	american sycamore	T	5	3	6	6	4	4	5	5	5	8	5	6	5	5	5	8	5	6	
<i>Betula nigra</i>	river birch	T	4	5	4	4	4	4	6	6	6	6	5	6	5	7	6	6	5	6	
<i>Ulmus americana</i>	american elm	T	2	2			1	1	2	2	2	2	2	2	2	2	2	2	2	2	
<i>Liquidambar styraciflua</i>	sweet gum	T		3	2	52	N/A	6	N/A	10	N/A	10	2	15	2	15	N/A	10	2	15	
<i>Acer rubrum</i>	red maple	T				1	N/A	2	N/A	1	N/A	2	N/A	1	N/A	1	N/A	2	N/A	1	
<i>Acer negundo</i>	boxelder	T		1			N/A	N/A	N/A	1	N/A	5	N/A		4.5		N/A	1	N/A	5	
<i>Quercus sp.</i>	oak species	T				2	N/A	N/A	N/A	N/A	2	N/A		2		N/A		N/A	N/A	2	
Plot Area (acres)			0.057																		
Species Count			5	7	5	7	3	5	3	6	4	6	4	5	4	5	4	3	4	6	
Stem Count			21	35	26	85	28	56	8	23	21	50	16	20	21	26	21	13	21	51	
Stems per Acre			368	614	456	1491	491	982	140	404	364	873	285	346	364	461	364	224	364	886	

Type=Shrub or

Tree

P = Planted

T = Total

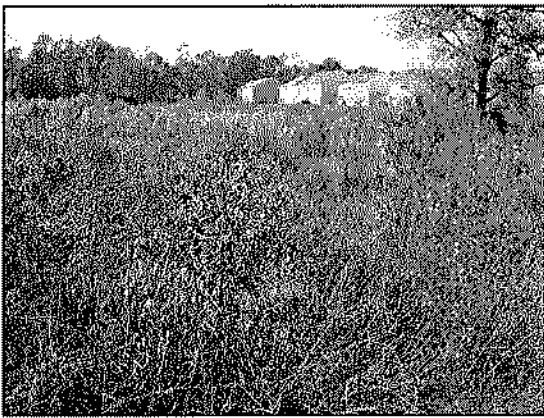
Vegetation Plot Sample Photos



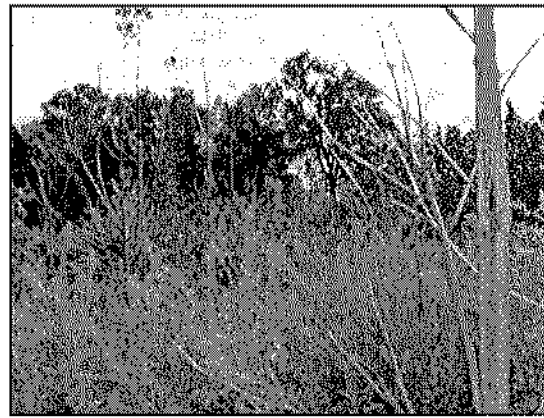
Vegetation Plot 1 (11/2007)



Vegetation Plot 1 (10/2010)



Vegetation Plot 2 (11/2007)



Vegetation Plot 2 (10/2010)



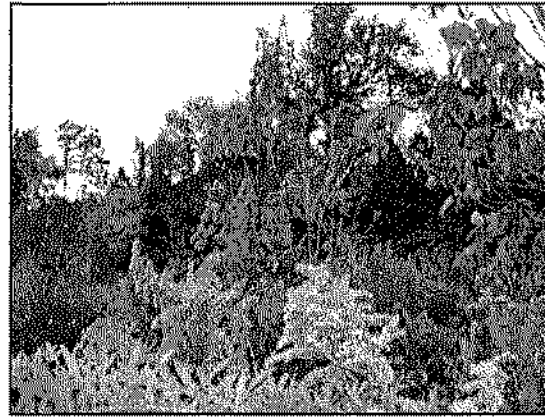
Vegetation Plot 3 (11/2007)



Vegetation Plot 3 (10/2010)



Vegetation Plot 4 (11/2007)



Vegetation Plot 4 (10/2010)

Wetland Data

Three groundwater monitoring gauges and one rain gauge were installed on-site. One gauge is located within an emergent wetland area adjacent to the main channel. The monitoring gauges were programmed to download groundwater levels daily and were downloaded monthly from March to November in order to capture hydrological data during each growing season. The target wetland hydrological success criterion is saturation or inundation for at least 12.5 percent of the growing season in the lower landscape (floodplain) positions. To achieve the above hydrologic success criterion, groundwater levels must be within 12-inches of the ground surface for 30 consecutive days, which is 12.5 percent of the March 21 to November 16 (241 days) growing season.

All gauges on-site consistently achieved the wetland success criterion of soil saturation within the upper 12 inches for 30 consecutive days during the growing season for the 5-year monitoring period (see **Table 5**). There were no problem areas observed within the wetland restoration zones for the Site. Within the wetland zones, hydrophytic vegetation and hydrology indicators have developed. In some areas, the appropriate soil chroma has also developed. It is suspected that these areas may have already had hydric conditions present. Hydrophytic vegetation consists of a thick herbaceous layer of sedge species (*Carex* spp.), rush species (*Juncus* spp.), bulrush species (*Scirpus* spp.), spotted touch-me-not (*Impatiens capensis*), and smartweed species (*Polygonum* spp.). The general success of hydrology within the wetland restoration zones is adequate to meet success requirements. Surface inundation to ground saturation was consistently observed throughout the site; therefore, appropriate hydrological condition for the wetland zones appears to be present.

Table 5. Wetland Criteria Attainment Back Creek/EEP Project No.17					
Summary of Groundwater Gauge Results for Years 1 through 5					
Gauge	Success Criteria Achieved/Max Consecutive Days During Growing Season (Percentage %)				
	Year 1 (2006)	Year 2 (2007)	Year 3 (2008)	Year 4 (2009)	Year 5 (2010)
GW1	Yes/241 Days (100%)	Yes/142 Days (59%)	Yes/241 Days (100%)	Yes/241 Days (100%)	Yes/234 Days (100%)
GW2	Yes/40 Days (17%)	Yes/58 Days (24%)	Yes/67 Days (28%)	Yes/96 Days (40%)	Yes/30 Days (38%)
GW3	Yes/103 Days (43%)	Yes/64 Days (27%)	Yes/83 Days (34%)	Yes/100 Days (42%)	Yes/55 Days (53%)

Addendum 1
Watershed Planning Summary

Watershed Planning Summary – Back Creek (EEP ID #17)

The Upper Rocky River Local Watershed Plan (LWP) area is ~200 square miles and is located in Cabarrus, Iredell, Mecklenburg and Rowan Counties, including the towns of Mooresville, Davidson, Cornelius, Huntersville, Concord, Harrisburg, Kannapolis, Mint Hill and the City of Charlotte. This LWP includes the hydrologic units 03040105010010, 03040105010020, 03040105020010, 03040105010030, 03040105010040, 03040105010050 and is characterized by both urban and rural landscapes. There are two phases of work for this LWP. The Phase 2 Watershed Management Plan, completed in November 2004, addresses Coddle Creek, Mallard Creek, Reedy Creek and Back Creek. (http://www.nceep.net/services/lwps/Clarke_Creek/Upper_Rocky.pdf)


According to the 2003 Mitigation Plan for Back Creek (EcoScience, 2003), the historic land use abutting the channel was pasture that was permitted to go fallow in more recent years preceding the restoration effort. Sewer line construction and historic landuse impaired the streams stability. Table 1 below summarizes the major LWP-identified watershed stressors, recommended management strategies and strategies addressed by the Back Creek Project.

Table 1. Summary of LWP-identified stressors addressed by the Back Creek Project.

LWP Stressors and Issues	Recommended Management Strategies	Back Creek Project
Stream bank erosion and sedimentation	Restore aquatic & wildlife habitat (including stream/wetland restoration, riparian buffers), development controls, S&EC ordinances.	Restored 3837 ft of stream
Lack of adequate forested buffer	Establish functioning buffers throughout the watershed, implement land preservation and restoration projects.	Restored riparian buffer along 3837 ft of stream.
Stream channelization	Stream restoration, riparian buffer restoration.	Restored 3837 ft of stream resulting in an increase in diversity of habitat (riffle/pool) for aquatic life.
Agricultural Impacts	Livestock exclusion, BMPs.	
Land Use Changes	Development controls (including LID & BMPs), S&EC ordinances, continued education, encourage community connection to water resources, implement land preservation techniques.	Projects presence and long term protection serves to limit development adjacent to stream and wetland resources for the projects extent in this portion of the affected watershed.
Point source in-stream impacts	Implement non-stormwater discharger management, encourage community connection to water resources, increase education, continue WQ monitoring and modeling	
Nutrients	Stream/wetland and riparian buffer restoration, development controls (including LID & BMPs), land preservation techniques, non-stormwater discharger management.	Restored riparian buffer, performed 0.44 ac wetland restoration and 3.2 ac wetland enhancement resulting in increased filtration of nutrients.
Fecal coliform bacteria	Development controls (including LID & BMPs), WQ monitoring and modeling, education, community connection to water resources.	

Addendum 2
Asset Debit Ledger

Addendum 3
Property Documents

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2006 FEB 02 09:41 AM
BK: 19973 PG: 340-356 FEE: \$59.00
INSTRUMENT # 2006021138

2006021138

STATE OF NORTH CAROLINA

Tax Code: 051-133-35, 051-134-66

COUNTY OF MECKLENBURG

Parcel # R-2559WM_704WM

PREPARED BY: Lisa Glover
Assistant Attorney General
North Carolina Department of Justice

RETURN TO: North Carolina Department of Transportation
Natural Environment Unit
1598 Mail Service Center
Raleigh, NC 27699-1598

mail to:
Division Right of Way
206 Charter Street
Albemarle, N.C. 28001

CONSERVATION EASEMENT

This Conservation Easement is granted on this 31st day of December, 2005, by MECKLENBURG COUNTY, a political subdivision of the State of North Carolina, having an address of 600 East Fourth Street, Charlotte, North Carolina, 28202 ("Grantor"), to THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION ("NCDOT"), having an address of 1598 Mail Service Center, Raleigh, NC 27699-1598 ("Grantee").

The designation 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.

WHEREAS:

Grantor is the sole owner in fee simple of certain real property more particularly described in Deed Book 15984, Page 225 and Deed Book 11829, Page 265, of the Mecklenburg County Registry, which consists of approximately 16 acres, more or less, located in Crab Orchard Township, Mecklenburg County, North Carolina.

The Property provides natural wildlife habitat for a wide variety of land, air and aquatic species, because of the streams that run through the Property; many of these species, which rely on the streams, are of great importance to the Grantor and the people of North Carolina.

The Grantor is willing to grant a perpetual Conservation Easement over 10.911 acres of the Property (the "Conservation Easement Area"), thereby restricting and limiting the use of land within the Conservation Easement Area to the terms and conditions and for the purposes hereinafter set forth.

The NCDOT is an agency of the State of North Carolina whose purpose includes the construction of transportation projects for public use and who has the authority to acquire land for the purpose of mitigating environmental impacts of these transportation projects.

The NCDOT desires to restore, enhance or preserve stream and associated streamside wetlands in Mecklenburg County on the Conservation Easement Area (hereinafter, the "Stream Mitigation Project"), and to hold a conservation easement over said length of stream and surrounding land and wetlands encompassing approximately 10.911 acres and referred to as the Conservation Easement Area;

The NCDOT, under a Section 404 permit granted by the United States Army Corps of Engineers ("USACE"), must conduct certain off-site stream and wetland mitigation work to compensate for impacts to streams and wetlands resulting from road construction;

The Stream Mitigation Project will be undertaken pursuant to a Stream Mitigation Plan developed by NCDOT, in coordination with the Grantor, for the restoration, enhancement and preservation of the streams and wetlands on the Conservation Easement Area, and kept on file with NCDOT;

The purposes of the Conservation Easement over the Conservation Easement Area are (1) to protect the mitigation activities performed by the NCDOT; (2) to preserve and protect the conservation values of the Conservation Easement Area, which include natural resources; wildlife habitat for land, air and aquatic species; aquatic resources, including streams, rivers, ponds, and wetlands; and scenic resources of the Property; (3) to prevent any use of the Conservation Easement Area that will significantly impair or interfere with these purposes; and, (4) to maintain permanently the dominant woodland, scenic and natural character of the Conservation Easement Area.

The specific conservation values of the Conservation Easement Area and its current use and state of improvement are described in the Back Creek Site Detailed Stream and Wetland Mitigation Plan (hereinafter "Mitigation Plan"), dated January 2003 and amended October 2003, prepared by Ecoscience Corporation, and acknowledged by all parties to be accurate as of the date of this Conservation Easement. The Mitigation Plan may be used by the Grantee to document any future changes in the use or character of the Conservation Easement Area in order

to ensure the terms and conditions of this Conservation Easement are fulfilled. This Mitigation Plan, however, is not intended to preclude the use of other evidence to establish the present condition of the Conservation Easement Area if there is a controversy over its use. The Grantor and Grantee have copies of this Mitigation Plan, and said plan will remain on file with the Office of Natural Environment of NCDOT.

The Grantor intends that the conservation values of the Conservation Easement Area be preserved and maintained, and further, Grantor intends to convey to the Grantee the right to preserve and protect the conservation values of the Conservation Easement Area in perpetuity.

The conservation purposes of this Conservation Easement are recognized by the Uniform North Carolina Conservation and Historic Preservation Agreements Act, N.C.G.S. § 121-34 *et seq.*, which provides for the enforceability of restrictions, easements, covenants or conditions "appropriate to retaining land or water areas predominantly in their natural, scenic, or open condition or in agricultural, horticultural, farming or forest use," N.C.G.S. § 121-35(1); and which provides for tax assessment of lands subject to such agreements "on the basis of the true value of the land and improvement less any reduction in value caused by the agreement," N.C.G.S. § 121-40.

NOW, THEREFORE, in consideration of the premises and other valuable considerations to Grantor, and in consideration of the mutual covenants, terms, conditions and restrictions contained herein, Grantor hereby grants and conveys unto Grantee and its successors or assigns forever and in perpetuity a Conservation Easement of the nature and character and to the extent hereinafter set forth, in respect to the following property:

Tract 1: All of that property designated as "Conservation Easement Tract 1 Area = 1.591 ac." as shown on survey for NC Department of Transportation (Project No. 6.678019) dated June 13, 2005 prepared by ESP Associates, P.A. recorded in Map Book 43 at Page 799 in the office of the Register of Deeds for Mecklenburg County.

Tract 2: Being all of that property designated as "Conservation Easement Tract 2 Area = 9.320 ac." as shown on survey for NC Department of Transportation (Project No. 6.678019) dated June 13, 2005 prepared by ESP Associates, P.A. recorded in Map Book 43 at Page 799 in the office of the Register of Deeds for Mecklenburg County.

There is excluded from this Easement those two tracts of land described as "NCDOT Conservation Easement Tract 1 Area = 0.021 Ac. (909 sq. ft.)" and "NCDOT Conservation Easement Tract 2 Area = 0.117 Ac. (5093 sq. ft.)" as shown on the aforesaid map.

Being a portion of the same property conveyed to Mecklenburg County by deed recorded in Book 11829 at Page 265 and Book 15984 at Page 225 in said Registry.

The terms, conditions and restrictions of the Conservation Easement are as hereinafter set forth:

1. Grant of Conservation Easement

Grantor hereby voluntarily grants and conveys to the Grantee, and the Grantee hereby voluntarily accepts, a perpetual Conservation Easement, which is an immediately vested interest in real property of the nature and character described herein. Grantor agrees that it will not perform, nor knowingly allow others to perform, any act on or affecting the Conservation Easement Area that is inconsistent with the covenants herein. Grantor authorizes the Grantee to enforce these covenants in the manner described below.

Grantor hereby voluntarily grants and conveys to the Grantee all development rights for the Conservation Easement Area, except as otherwise reserved and provided by the terms of this Conservation Easement, that are now or hereafter inherent in the Conservation Easement Area. The parties agree that such rights are terminated and extinguished, and may not be used on or transmitted to any portion of the Property, as it now or hereafter may be bounded or described, or to any other property.

2. Statement of Purpose, Duration

The primary purpose of the Conservation Easement is to protect the NCDOT's mitigation activities within the Conservation Easement Area, including the restored, enhanced, and preserved stream areas. Except as specifically permitted herein, no activity that shall significantly impair the condition of the restored, enhanced or preserved stream areas on the Conservation Easement Area shall be permitted.

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

3. Zones within Conservation Easement Area

The Conservation Easement Area in each tract is divided into three zones. "Zone One" begins at the top of bank and extends landward a distance of 30 feet on all sides of the stream, measured horizontally on a line that is perpendicular to a vertical line marking the edge of the stream. "Zone Two" begins at the outer edge of Zone One and extends landward a distance of 20 feet, measured horizontally on a line that is perpendicular to a vertical line marking the edge of the stream. The remainder of the Conservation Easement Area is classified as "Zone Three."

4. Access

Access to the Conservation Easement Area will be by way of State Road 2827, also known as Back Creek Church Road, as well as by way of an NCDOT-maintained access point from Interstate 485.

The NCDOT and its authorized representatives, including the USACE and the Ecosystem Enhancement Program of the North Carolina Department of Environment and Natural Resources, at all reasonable times and continuing in perpetuity, shall have the right to access the

Conservation Easement Area (1) in order to conduct and monitor the Stream Mitigation Project; and (2) for the purpose of inspecting the Conservation Easement Area to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The NCDOT will notify the Grantor by phone, email, or other correspondence before entering the Property for the purpose of determining compliance. However, if the NCDOT in its sole discretion determines that circumstances require immediate entry, such party is not required to notify Grantor prior to entry but will notify Grantor within two business days of such entry.

5. Rights and Responsibilities Retained by Grantor

Subject to the terms and restrictions contained herein, the Grantor reserves to and for itself and its successors all customary rights and privileges of ownership, including without limitation the right to quiet enjoyment of the Conservation Easement Area; the rights to sell, lease, encumber, impose restrictions on and devise the Conservation Easement Area, provided such transaction is subject to the terms of this Conservation Easement and written notice is provided to the Grantee; together with any rights not specifically prohibited by or limited by this Conservation Easement, and not inconsistent with the purposes of this Conservation Easement. Unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Conservation Easement Area after any Act of God or other event over which it had no control. Grantor understands that nothing in this Conservation Easement relieves it of any obligation or restriction on the use of the Conservation Easement Area imposed by law.

6. Right to Privacy

Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Conservation Easement Area. This Conservation Easement does not create any rights of the public in, on or to the Conservation Easement Area, although the public has the right to view the Conservation Easement Area from any adjacent publicly accessible areas.

7. Subdivision

The Conservation Easement Area may not be subdivided, partitioned nor conveyed from the Property, except in its current configuration as an entity or block of the Property.

8. Passive Recreational Use

Grantor retains the right to engage in, or allow the public to engage in, passive recreational uses of the Conservation Easement Area (requiring no surface alteration of the land and posing no threat to the conservation values set forth herein), including, without limitation, walking, jogging, running, or bicycling on established greenways; wildlife observation; or nature study; as long as such activity is consistent with the purposes of this Conservation Easement and is not prohibited by Paragraph 9 below. Grantor is specifically allowed to construct the trails described below in Paragraph 9(I).

9. Permitted and Restricted Activities

Any activity on, or use of, the designated Conservation Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Conservation Easement Area by the Grantor is prohibited as inconsistent with the purposes of the Conservation Easement. The Conservation Easement Area shall be maintained in its natural, scenic and open condition and restricted from any development that would significantly impair or interfere with the conservation values of this Conservation Easement Area, and any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or sub-surface waters is prohibited. Any rights not expressly reserved hereunder by the Grantor have been acquired by the Grantee.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder:

A. *Disturbance of Natural Features*

Any changes, disturbance, alteration or impairment of the natural, scenic and aesthetic features of the Conservation Easement Area or any introduction of non-native plants and/or animal species is prohibited unless the NCDOT gives its prior written consent or unless otherwise expressly permitted herein.

B. *Agricultural, Grazing, and Horticultural Use and Fencing*

Agricultural, grazing and horticultural use, including landscaping, of the Conservation Easement Area is prohibited. No herbicides, insecticides, fungicides, fertilizers or other potentially harmful substances may be used in the Conservation Easement Area without advance written permission from the NCDOT. No agricultural products or by-products may be disposed of in the Conservation Easement Area or within 100 feet of the streambank, whichever is greater, or result in or cause discharge or runoff directly into the Conservation Easement Area. Existing fences may be repaired and replaced.

C. *Silvicultural Use and Land Clearing*

There may be no destruction or cutting of live trees or plants in the Conservation Easement Area, except upon written approval of NCDOT, or unless otherwise expressly permitted herein. Removal of diseased or damaged live trees, large snags for safety or protection of property, or removal of dead brush for fire management, is permitted.

D. *Dumping and Storage*

Dumping or storage of soil, trash, refuse, debris, ashes, garbage, waste, abandoned vehicles or parts, appliances, machinery, or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the

Conservation Easement Area is prohibited. No agricultural products or by-products, or agricultural equipment, may be dumped or stored in the Conservation Easement Area.

E. *Mineral Use, Excavation, and Dredging*

There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials, and no change in the topography of the land in any manner on the Conservation Easement Area, or on adjacent property if owned by the Grantor or its successors, which would cause erosion or siltation on the Conservation Easement Area.

F. *Industrial Use*

Industrial activities on the Conservation Easement Area are prohibited.

G. *Residential Use*

Residential use of the Conservation Easement Area is prohibited.

H. *Commercial Use*

Commercial activities in the Conservation Easement Area are prohibited.

I. *Construction, Roads, Motorized Vehicles, Greenways*

There shall be no building, shed, facility, mobile home, or other structure constructed or placed in the Conservation Easement Area. No new roads, either paved or unpaved, may be constructed in the Conservation Easement Area except as allowed and described in the Stream Mitigation Plan. Motorized vehicles, including off-road vehicles, are prohibited in the Conservation Easement Area; provided, however, that Grantor may use motorized vehicles to maintain the greenway trails discussed below or to provide security for the greenway trails. Any motorized vehicles so used must remain on the greenway trail to the maximum extent possible.

The NCDOT expressly reserves the right to install, operate, and maintain structures or unpaved roads, and to use motorized vehicles in any manner necessary, for the purpose of reestablishing, protecting, and enhancing stream functional values, including those described in the Stream Mitigation Plan, for the Conservation Easement Area. All structures allowed under this paragraph, but not necessary for maintenance of the stream mitigation activities, will be removed once the USACE has given final approval of the Stream Mitigation Project.

Grantor is hereby authorized to construct a ten (10) foot wide greenway trail in the Conservation Easement Area, which may be surfaced in asphalt, concrete, and/or boardwalk. The maximum trail corridor width permanently cleared and maintained shall not exceed twenty (20) feet. Grantor shall construct the greenway trail within existing utility easements wherever practical. Grantor may construct the following listed trail amenities within the twenty (20) foot

wide corridor: trashcans, signs, benches, security cameras, and emergency phones. In addition to these requirements, Grantor shall construct the greenway trail in accordance with Appendix D, Corridors and Facility Design Guidelines, of the Mecklenburg County Greenway Master Plan (1999 – 2009), prepared by Haden-Stanziale and Greenways, Inc., as adopted in March 1999 by the Mecklenburg County Board of Commissioners, and including any subsequent amendments adopted by the Board.

NCDOT must provide advance written approval, which will not be unreasonably withheld, before construction begins of the greenway trail construction plan and any stream crossings of the greenway, including the crossing location, width, and design. Nothing in this Conservation Easement relieves Grantor's responsibilities to obtain any needed environmental permits or authorizations necessary to construct a greenway.

J. *Signs*

No signs shall be permitted in the Conservation Easement Area except interpretive signs describing activities and the conservation values of the Conservation Easement Area, signs identifying the owner of the Property and the holder of the Conservation Easement, and signs identifying the greenway trails, giving directions or prescribing rules and regulations for the use of the Conservation Easement Area, which shall specifically include "No Trespassing," "No Hunting," and "Posted" signs, if applicable.

K. *Utilities*

Grantor is allowed to perform routine maintenance on any existing utility system located in the Conservation Easement Area. The installation of new or expanded utility systems is discouraged, and is allowed only to the extent permitted by this Paragraph 9(K).

Cellular and other communication towers are prohibited. New sewer lines, and other non-electric utility lines such as water lines, are allowed only in Zone Three of the Conservation Easement Area, except for perpendicular crossings of the stream that disturb equal to or less than forty (40) linear feet in width of the Conservation Easement Area with a maintenance corridor equal to or less than ten (10) feet in width. Connections to the existing sewer line are permitted in Zone Two or Zone Three, and may cross perpendicular to the stream if they disturb equal to or less than forty (40) linear feet in width of the Conservation Easement Area, and have a maintenance corridor equal to or less than ten (10) feet in width.

Overhead electric utility lines are allowed in Zone Two and Zone Three only; provided, however, that overhead electric utility line perpendicular crossings of the stream are allowed if they disturb equal to or less than 150 linear feet in width of the Conservation Easement Area. Underground electric utility lines are allowed in Zone Two and Zone Three only; provided, however, that underground electric utility line perpendicular crossings of the stream are allowed if they disturb less than or equal to forty (40) linear feet in width of the Conservation Easement Area.

All new stream crossings associated with utility lines (electric or non-electric) must be approved in advance in writing by NCDOT, which approval will not be unreasonably withheld. New stream crossings should be minimized and are encouraged to be grouped together whenever practicable.

Nothing in this Conservation Easement relieves Grantor's responsibilities to obtain any needed environmental permits or authorizations necessary to construct utilities or permit utility placement. Grantor shall notify the NCDOT Division Engineer if right-of-way clearing or other work in the Conservation Easement Area is scheduled by a utility and notice is provided to the Grantor. Any such clearing should be in keeping with the intent of the Conservation Easement.

L. *Water Quality and Drainage Patterns*

Grantor shall conduct no activities in the Conservation Easement Area that would be detrimental to water quality or to any of the plants or habitats within the Conservation Easement Area, or that would alter natural water levels, drainage, sedimentation and/or flow in or over the Conservation Easement Area, or cause soil degradation or erosion. Diking, dredging, alteration, draining, filling or removal of wetlands or stream by the Grantor is prohibited. In addition, Grantor is prohibited from diverting or causing or permitting the diversion of surface or underground water into, within or out of the Conservation Easement Area by any means; polluting or discharging into waters, springs, seeps, or wetlands; or using pesticides or biocides in the Conservation Easement Area unless agreed to in writing by the NCDOT.

M. *NCDOT's Rights*

The NCDOT reserves the right to use the Conservation Easement Area in any way necessary, consistent with the terms herein, to undertake any activities to protect, restore, manage, maintain, or enhance stream or wetland functional values, and monitor the mitigation work, as described in the Stream Mitigation Plan, in order to mitigate for impacts to streams or wetlands resulting from road construction. These mitigation activities include, but are not limited to, construction of new stream channels; restoration/stabilization of existing stream channels; installation of natural and manmade materials as needed to direct in-stream, above ground, and subterranean water flow; planting of trees, shrubs and herbaceous vegetation; and utilization of heavy equipment to grade, fill, and prepare the soil. The NCDOT further reserves the right to monitor the results of the mitigation activities in perpetuity and to repair or restore any damage to the Conservation Easement Area occurring after initial completion of the construction associated with mitigation activities.

10. Ongoing Responsibilities of Grantor

Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantor, or in any way to affect any existing obligation of the Grantor as owner of the Property. Among other things, this shall apply to:

A. *Taxes*

The Grantor shall continue to be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee is ever required to pay any taxes or assessments on its interest in the Property, the Grantor will reimburse the Grantee for the same.

B. *Upkeep and Maintenance*

The Grantor retains all responsibilities and shall bear all costs and liabilities of any kinds related to the ownership, operation, upkeep and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. The Grantee shall have no obligation for the upkeep or maintenance of the Property. The Grantor shall have no obligation for the upkeep or maintenance of the Conservation Easement Area, except to the extent that Grantor-controlled utility systems, greenway trails, or other structures are located in the Conservation Easement Area. Grantor retains responsibility for upkeep and maintenance of those facilities.

C. *Liability and Indemnification*

Grantor agrees to indemnify and hold Grantee harmless from any and all costs, claims or liability, including but not limited to reasonable attorney's fees, arising from any personal injury, accidents, negligence or damage relating to the Property, or any claim thereof, unless due to the intentional misconduct or negligence of Grantee or its agents, in which case liability shall be apportioned accordingly.

11. Enforcement

The NCDOT shall have the right to prevent violations and remedy violations of the terms of this Conservation Easement through judicial action, which shall include, without limitation, the right to bring proceedings in law or in equity against any party or parties attempting to violate the terms of this Conservation Easement. Except when an ongoing or imminent violation could irreversibly diminish or impair the conservation values of the Conservation Easement Area, the NCDOT shall give the Grantor written notice of the violation and thirty (30) days to cure the violation, before commencing any legal proceedings. If a court with jurisdiction determines that a violation may exist or has occurred, the NCDOT may obtain an injunction to stop the violation, temporarily or permanently. The parties agree that a court may issue an injunction or order requiring the Grantor to restore the Conservation Easement Area to its condition prior to the violation as restoration of the Conservation Easement Area may be the only appropriate remedy. In any case where a court finds that a violation has occurred, the Grantor shall reimburse the NCDOT for all its expenses incurred in stopping and correcting the violation, including but not limited to court costs, attorneys' fees, and any other costs incurred with onsite remediation. If legal action is brought by the NCDOT and the court finds that no violation has occurred, each party shall bear its own costs. The failure of the NCDOT to discover a violation or to take immediate legal action shall not bar it from doing so at a later time for that violation or any subsequent violations.

12. Transfer of Easement

The Grantee shall have the right to transfer this Conservation Easement to the Ecosystem Enhancement Program of the North Carolina Department of Environment and Natural Resources, or to any public agency or private nonprofit organization that, at the time of transfer, is a qualified organization under §170(h) of the U.S. Internal Revenue Code, as amended and under NCGS §121-34 *et seq.*, provided the agency or organization expressly agrees to assume the responsibility imposed on the transferring party or parties by this Conservation Easement. As a condition of such transfer, Grantee shall require that the conservation purposes intended to be advanced hereunder shall be continued to be carried out.

13. Transfer of Property

Grantor agrees to incorporate by reference the terms of this Conservation Easement in any deed or other legal instrument by which it transfers or divests itself of any interests, including leasehold interests, in all or a portion of the Conservation Easement Area. Failure of Grantor to comply with this section shall not impair the validity of this Conservation Easement as to successor owners or limit its enforceability in any way, nor shall Grantor's failure to comply with this section constitute a default under this Conservation Easement.

14. Amendment of Easement

This Conservation Easement may be amended by a written instrument executed by the Grantee and the Grantor. Any such amendment shall be consistent with the purpose of this Conservation Easement and its terms, and shall comply with Section 170(h) of the Internal Revenue Code or any regulations promulgated in accordance with that section. Any such amendment shall be duly recorded.

15. Procedure in the Event of Changed Conditions

The grant or donation of this Conservation Easement gives rise to a property right immediately vested in Grantee, with a fair market value equal to the proportionate value that the Conservation Easement bears to the value of the Property as a whole. That proportionate value of Grantee's property rights shall remain constant. If a change in conditions occurs, which makes impossible or impractical any continued protection of the Conservation Easement Area for conservation purposes, the restrictions contained herein may only be extinguished by judicial proceeding. Any proceeds recovered in such actions shall be divided in accordance with the proportionate value of Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds. The Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Upon such proceedings, such portion shall be equal to the proportionate value that Grantee's, its successor's and assign's, interest in the Conservation Easement Area bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a

condition to the sale, exchange or involuntary conversion of the Conservation Easement Area, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding.

16. Procedure in the Event of Condemnation or Eminent Domain

Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate or other authority, or by negotiated sale in lieu of condemnation, so as to abrogate the restrictions imposed by this Conservation Easement, the Grantor shall immediately give notice to Grantee and shall take all appropriate actions at the time of such taking or sale to recover the full value of the taking and all incidental or direct damages resulting from the taking. Any proceeds recovered in such actions shall be divided in accordance with the proportionate value of Grantor's and Grantee's interests as specified herein; all expenses including attorneys' fees incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority. The Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of such sale, exchange, involuntary conversion of the Property, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the proportionate value that Grantee's, its successor's and assign's interest in the Conservation Easement Area bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred or contributed in consideration for, or as otherwise required as a condition to the sale, exchange or involuntary conversion of the Conservation Easement Area, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding.

17. Interpretation

This Conservation Easement shall be interpreted under the laws of the State of North Carolina, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.

18. Perpetual Duration; Severability

This Conservation Easement shall be a servitude running with the land in perpetuity. Every provision of this Conservation Easement that applies to the Grantor or the Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Invalidity of any of the covenants, terms or conditions of this Conservation Easement, or any part thereof, by court order or judgment shall in no way affect the validity of any of the other provisions hereof, which shall remain in full force and effect.

19. Notices

Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail to the parties respectively at the following addresses, unless a party has been notified in writing by the other of a change of address:

To Grantor:
Attn: County Manager
Mecklenburg County
600 East Fourth Street
Charlotte, NC 28202

To NCDOT:
Natural Environment Unit
1598 Mail Service Center
Raleigh, NC 27699-1598

In any provision of this Conservation Easement in which the Grantor is required to provide advance notice to the Grantee of any activity on the Property, such notice shall be given not less than thirty days prior to the planned commencement of the activity. If the Grantee's approval is required, such approval shall be deemed withheld unless Grantee provides to the Grantor written notice of approval within 30 days of receipt of said request. If Grantor has received no response after said 30 days, Grantor may send a second written notice to Grantee requesting a statement of the reasons for the disapproval and the Grantee shall respond within 30 days with an explanation for the specific reasons and basis for its decision to disapprove.

20. Grantor's Title Warranty

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 the Conservation Easement Area is free and clear of any and all encumbrances, except easements and leases of record or in effect by prescriptive rights as of the date hereto; and that there is legal access to the Property; 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 easements conveyed.

21. Subsequent Liens

No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use the Conservation Easement Area as collateral for subsequent borrowing. Any such liens shall be subordinated to this Conservation Easement.

22. Subsequent Easements/Restrictions

The grant of any easements or use restrictions that might diminish or impair the conservation values of the Conservation Easement Area are prohibited. Any such easements or restrictions shall be subordinated to this Conservation Easement.

23. Grantor's Environmental Warranty

The Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property, as such substances and wastes are defined by applicable federal and state law, and hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste caused by the intentional or negligent act of the Grantor or violation of federal, state or local environmental laws caused by the negligent or intentional act of the Grantor. Without limiting the generality of the foregoing, nothing in this Conservation Easement shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

24. 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 said easement.

25. Recording

The Grantee shall record this instrument and any amendment hereto in timely fashion with the Office of the Register of Deeds of Mecklenburg County, North Carolina, and may re-record it at any time as may be required to preserve its rights under this Conservation Easement.

26. Merger

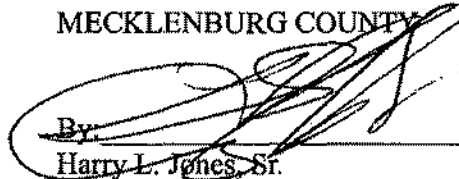
The Parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Property.

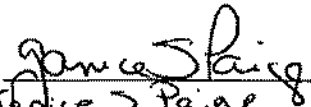
TO HAVE AND TO HOLD this Conservation Easement unto Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR:

MECKLENBURG COUNTY

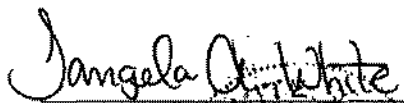
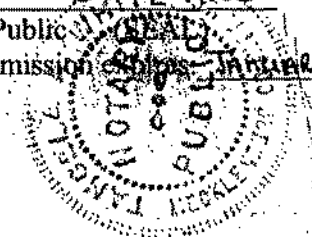
By:  (Seal)
Harry L. Jones, Sr.
County Manager

ATTEST:  (Seal)
Name: Janice S. Paige
Clerk to the Board of Mecklenburg County Commissioners

NORTH CAROLINA
MECKLENBURG COUNTY

I, Tangela A. White, a Notary Public of mecklenburg County, North Carolina do hereby certify that Janice S. Paige personally appeared before me this day and by me duly swears that he/she knows the common seal of said County of Mecklenburg, and is acquainted with Harry L. Jones, Sr., who is the County Manager of said County, and that he/she, the said Clerk, is Clerk to the Board of Commissioners of said County, and that he/she, the said Clerk, affixed said seal to said instrument, and that he/she, the said Clerk, signed his/her name in attestation of execution of said instrument.

Witness my hand and official stamp or seal this the 21st day of December, 2005.

 1-5-2010
Notary Public
My commission expires January 5, 2010


Accepted:

GRANTEE:

THE NORTH CAROLINA DEPARTMENT
OF TRANSPORTATION

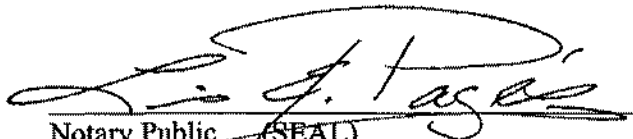
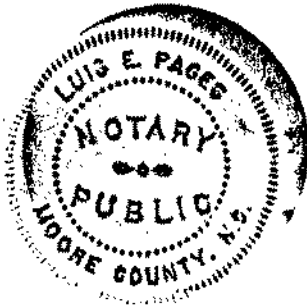


By: A.D. Allison, II
Assistant Manager, Right of Way Branch

NORTH CAROLINA
WAKE COUNTY

I, LUIS E. PAGES, a Notary Public of MOORE County, North Carolina do hereby certify that A.D. Allison, II personally came before me this day and acknowledged that he is the Assistant Manager of the Right of Way Branch of the North Carolina Department of Transportation, an agency of the State of North Carolina, and that by authority duly given he executed the foregoing instrument.

Witness my hand and official stamp or seal this the 5 day of JAN, 2006.



Notary Public (SEAL)

My commission expires: 4.24.200



JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of the recorded document, and must be submitted with original for re-recording
and/or cancellation.

Filed For Registration: 02/02/2006 09:41 AM
Book: RE 19973 **Page:** 340-356
Document No.: 2006021138
ESMT 17 PGS \$59.00
Recorder: SERENA ROSS



2006021138



FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2005 JUN 14 09:37 AM
BK:43 PG:799-800 FEE:\$21.00

INSTRUMENT # 2005108599



JUDITH A. GIBSON
REGISTER OF DEEDS, MECKLENBURG
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE, NC 28202

PLEASE RETAIN YELLOW TRAILER PAGE

It is part of the recorded document, and must be submitted with original for re-recording
and/or cancellation.

Filed For Registration: 06/14/2005 09:37 AM
Book: MAP 43 Page: 799-800
Document No.: 2005108599
MAP 2 PGS \$21.00
Recorder: TERESITA BYRUM



2005108599

Return To: Division Right of Way Agent
By 94
Meck. Co. Registrar of Deeds
NORTH CAROLINA
MECKLENBURG COUNTY

FOR REGISTRATION JUDITH A. GIBSON
REGISTER OF DEEDS
MECKLENBURG COUNTY, NC
2002 MAY 22 12:09 PM
BOOK: 13812 PAGE: 287-288 FEE: \$38.00
NC REAL ESTATE EXCISE TAX: \$89.00
INSTRUMENT # 2002099466

CONSERVATION EASEMENT and EASEMENTS OF INGRESS AND EGRESS

THIS CONSERVATION EASEMENT and EASEMENTS OF INGRESS AND EGRESS, made this 14th day of May, 2002, by and between **Back Creek II. Developers, LLC**, hereinafter called the "Grantor(s)" and the North Carolina Department of Transportation, Division of Highways, 1548 Mail Service Center, Raleigh, NC 27699-1548, hereinafter called the "NCDOT," provides the following:

WITNESSETH

WHEREAS, the Grantor is the sole owner in fee simple of certain real property in Crab Orchard Township of Mecklenburg County, North Carolina, as more particularly described in Book 12348, Pages 069 and 074 of the Mecklenburg County Registry, North Carolina, which land is hereinafter referred to as "the Property";

WHEREAS, the NCDOT is an agency of the State of North Carolina whose purpose includes the construction of transportation projects for public use and who has the authority to acquire land for the purpose of mitigating environmental impacts of these transportation projects;

WHEREAS, the Grantor is willing to grant a perpetual Conservation Easement over approximately 3.09 acres of the Property (the Conservation Easement Area), thereby restricting and limiting the use of land within the Conservation Easement Area to the terms and conditions and for the purposes hereinafter set forth, and to further grant both a Temporary and Permanent Access Easement of Ingress and Egress to the Conservation Easement Area, upon and along the Property as more particularly set forth hereinafter;

WHEREAS, the Uniform Conservation and Historic Preservation Agreements Act, N.C.G.S. § 121-34 et. seq., provides for the enforceability of restrictions, easements, covenants or conditions appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use;

WHEREAS, the NCDOT, under a Section 404 permit granted by the U. S. Army Corps of Engineers (USACE), must conduct certain off-site stream restoration to mitigate for impacts to streams resulting from the construction of Monroe Bypass, R-2559 B and R-2559 C;

WHEREAS, the USACE has reviewed and approved the use of the Conservation Easement on the Property to mitigate for the stream impacts, and such will satisfy the said permit conditions after the completion of the stream monitoring period;

WHEREAS, the purposes of this Conservation Easement are to protect the mitigation activities performed by the NCDOT, to preserve and protect the conservation values of the Conservation Easement Area, to prevent any use of the Conservation Easement Area that will significantly impair or interfere with these purposes, and to maintain permanently the dominant woodland, scenic and natural character of the Conservation Easement Area designated on the Property as hereinafter described.

NOW THEREFORE, in consideration of the sum of Twenty-nine Thousand, Three Hundred, Fifty-five Dollars (\$29,355.00) and other valuable considerations to the Grantor in hand paid by the NCDOT, the receipt of which is hereby acknowledged, and in further consideration of the mutual covenants, terms, conditions, and restrictions hereinafter set forth, the Grantor hereby grants and conveys unto the NCDOT and its successors or assigns forever and in perpetuity a Conservation Easement, pursuant to the USACE Section 404 permit requirements, of the nature and character and to the extent hereinafter set forth, in respect to the land of the grantor situated in Mecklenburg County, North Carolina, as described in **Exhibit A**, and hereinafter referred to as the "Conservation Easement Area"; (Easement Survey by Kenney Design Group, P.A.) and **Exhibit B**, (metes and bounds description).

The terms, conditions and restrictions of the Conservation Easement are as hereinafter set forth:

9

\$59.00
stamps
2

ARTICLE I. DURATION OF EASEMENTS; ACCESS

A. Conservation Easement. This Conservation Easement shall be perpetual. It is an easement in gross, runs with the land and is enforceable by the NCDOT or its successors and/or assigns against the Grantor(s), Grantor(s) heirs, devisees, successors and assigns, lessees, agents and licensees.

Further, the NCDOT and its authorized representatives shall have the right in perpetuity to enter the Conservation Easement Area through the Property over this Permanent Access Easement in perpetuity, at all reasonable times, for the purpose of inspecting said Conservation Easement Area to determine if the Grantor is complying with the terms, conditions, restrictions, and purposes of this Conservation Easement. The NCDOT will notify the Grantor by phone, email, or other correspondence before entering the Property for this purpose. However, if the NCDOT in its sole discretion determines that circumstances require immediate entry, such party is not required to notify Grantor prior to entry but will notify Grantor within two business days of such entry.

B. Public Access. The easement rights granted herein do not include public access rights. However, the public has the right to view the Conservation Easement Area from any adjacent publicly accessible area.

ARTICLE II. PROHIBITED, RESTRICTED AND RESERVED ACTIVITIES

Any activity on, or use of, the designated Conservation Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. Unless expressly reserved as a compatible use herein, any activity in, or use of, the Conservation Easement Area by the Grantor is prohibited as inconsistent with the purposes of the Conservation Easement. The Conservation Easement Area shall be maintained in its natural, scenic and open condition and restricted from any development that would significantly impair or interfere with the conservation values of this Conservation Easement Area. Any rights not expressly reserved hereunder by the Grantor have been acquired by the NCDOT.

Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited, restricted or reserved as indicated hereunder:

1. Disturbance of Natural Features. Any changes, disturbance, alteration or impairment of the natural, scenic and aesthetic features of the Conservation Easement Area or any introduction of non-native plants and/or animal species is prohibited unless the NCDOT shall give its prior written consent or unless otherwise expressly permitted herein.

2. Agricultural, Grazing and Horticultural Use. Agricultural, grazing and horticultural use, including landscaping, of the Conservation Easement Area is prohibited. Livestock shall only cross at areas appointed and agreed upon in the Mitigation Plan.

3. Stream Crossings. The NCDOT may agree to the Grantor moving existing stream crossings, installing new crossings or widening the existing stream crossings and construction, if needed in the future, provided that any such request is consistent with the purposes of this Conservation Easement, the Grantor obtains prior written approval from the NCDOT, and will be done with all necessary state and federal permits.

4. Silvicultural Use and Land Clearing. There may be no destruction or cutting of trees or plants in the Conservation Easement Area, except in accordance with Mitigation Plan, or upon written approval of the NCDOT. The gathering of firewood in the Conservation Easement Area shall be limited to dead trees, such that the gathering is consistent with purposes of this Conservation Easement. Removal of large live trees and nonnative invasive vegetation may be allowed in some cases provided that any such request is consistent with the purposes of this Conservation Easement and the Grantor obtains prior written approval from the NCDOT.

5. Hunting and Fishing. Grantor expressly reserves the right to hunt and fish on the Conservation Easement Area and to control access of all persons for the purpose of hunting and fishing; provided that these activities do not impact the protection and conservation of any wildlife habitat or other conservation values of the Conservation Easement Area.

6. Dumping or Storage. Dumping or storage of soil, trash, ashes, garbage, waste, abandoned vehicles, appliances, machinery, or hazardous substances, or toxic or hazardous waste, or any placement of underground or aboveground storage tanks or other materials on the Conservation Easement Area is prohibited.

7. 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 material, and no change in the topography of the land in any manner on the Conservation Easement Area nor shall there be any activities conducted on the Conservation Easement Area or on adjacent property if owned by the Grantor and their successors which would cause erosion or siltation on the Conservation Easement Area.

8. Industrial Use. Industrial activities in the Conservation Easement Area are prohibited.

9. Residential Use. Residential use of the Conservation Easement Area is prohibited.

10. Commercial Use. Commercial activities in the Conservation Easement Area are prohibited

11. New Construction. There shall be no building, shed, facility, mobile home, or other structure constructed or placed in the Conservation Easement Area; provided, however, that the NCDOT expressly reserves the right to install, operate and maintain structures for the purpose of reestablishing, protecting, and enhancing stream functional values, including those described in the Mitigation Plan, for the Conservation Easement Area.

12. Signs. No signs shall be permitted in the Conservation Easement Area except interpretive signs describing restoration activities and the conservation values of the Conservation Easement Area, signs identifying the owner of the Protected Property and the holder of the Conservation Easement, and signs giving directions or proscribing rules and regulations for the use of the Conservation Easement Area.

13. Subdivision. Subdivision, partitioning, or dividing the Conservation Easement Area is prohibited.

14. 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.

15. Utilities. The installation of utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities, is prohibited. If there are existing utility easements (rights of way) located in the Conservation Easement Area or affecting the Conservation Easement, Grantor shall notify the NCDOT if right of way clearing or other work in the Conservation Easement Area is scheduled by the utility.

16. Water Quality and Drainage Pattern. Grantor shall conduct no activities in the Conservation Easement Area that would be detrimental to water purity or to any of the plants or habitats within the Conservation Easement Area, or that would alter natural water levels, drainage, sedimentation and/or flow in or over the Conservation Easement Area, or cause soil degradation or erosion. Diking, dredging, alteration, draining, filling or removal of wetlands or stream by the Grantor is prohibited. In addition, Grantor is prohibited from diverting or causing or permitting the diversion of surface or underground water into, within or out of the Conservation Easement Area by any means; polluting or discharging into waters, springs, seeps, or wetlands; or using pesticides or biocides in the Conservation Easement Area unless agreed to in writing by the NCDOT.

17. Grantor's Rights. The Grantor, for themselves, their successors, assigns, invitees and licensees, hereby reserves the right to quiet enjoyment of the Conservation Easement Area; the right of ingress and egress to the Conservation Easement Area and all adjacent property of the Grantor; the right to continue such uses as exists as of the date of this grant not inconsistent with this Conservation Easement; and the right to sell, transfer, gift or otherwise convey the Conservation Easement Area, in whole, provided such sale, transfer or gift conveyance is subject to the terms of this Conservation Easement and written notice is provided to the NCDOT in accordance with the provisions herein below.

18. NCDOT's Rights. The NCDOT reserves the right to use the Conservation Easement Area in any way necessary, consistent with the terms herein, to undertake any activities to protect, restore, manage, maintain, or enhance stream functional values, and monitor the restoration resources, as described in the Mitigation Plan for the Conservation Easement Area, in order to mitigate for impacts to streams resulting from road construction. These mitigation activities include, but are not limited to, construction of new stream channels; restoration/stabilization of existing stream channels; installation of natural and man-made materials as needed to direct in-stream, above ground, and subterranean water flow; planting of trees, shrubs and herbaceous vegetation; collecting live cuttings; and utilization of heavy equipment to grade, fill, and prepare the soil.

The NCDOT further reserves the right to monitor the results of the mitigation activities in perpetuity and to repair or restore any damage to the Conservation Easement Area occurring after initial completion of the construction associated with mitigation activities.

ARTICLE III. ENFORCEMENT AND REMEDIES

Nothing contained herein shall be construed to entitle the Grantor or NCDOT to bring any action against the other party for any injury or change in the Property resulting from causes beyond the control of either party, including fire, flood, storm, war, acts of God or third parties, or from any prudent action taken in good faith by either party under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Conservation Easement Area resulting from such causes, in accordance hereunder.

The NCDOT has the right to prevent any action on or use of the Conservation Easement Area that is inconsistent with the purpose of this Conservation Easement and to require the restoration of such areas or features of the Conservation Easement Area that may be damaged by any inconsistent activity or use. If the NCDOT determines that the Grantor is in violation of the terms of this Conservation Easement or that a violation is threatened, NCDOT shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Conservation Easement Area resulting from any use or activity inconsistent with the purpose of this Conservation Easement, to restore the portion of the Conservation Easement Area so injured. If Grantor fails to cure the violation within thirty (30) days after receipt of notice thereof from NCDOT, or under circumstances where the violation cannot reasonably be cured within a thirty (30) day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, NCDOT may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Conservation Easement, to enjoin the violation, as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for the loss of conservation values, and to require the restoration of the Conservation Easement Area to the condition that existed prior to any such injury. If the NCDOT, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Conservation Easement Area, the NCDOT may pursue its remedies without prior notice to the Grantor. NCDOT shall exercise

reasonable efforts to notify the Grantor and shall, in any event, notify Grantor within two business days after action is taken to explain the action undertaken.

NCDOT's remedies shall be cumulative and shall be in addition to any other rights and remedies available to NCDOT at law or equity. Any cost incurred by NCDOT in enforcing the terms of this Conservation Easement against Grantor or its successors or assigns, including, without limitation, costs of suit and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Conservation Easement shall be borne by Grantor.

No failure on the part of the NCDOT to enforce any covenant or provision hereof shall be a waiver to discharge or invalidate such covenant or any other covenant, condition, or provision hereof or affect the right of NCDOT to enforce the same in the event of a subsequent breach or default.

The Grantor reserves the right to take action against the NCDOT for use of the Conservation Easement Area in a way that is inconsistent with the purpose of this Conservation Easement. Any cost incurred by Grantor in enforcing the terms of this Conservation Easement against NCDOT or its successors or assigns, including, without limitation, costs of suit and attorney's fees, shall be borne by NCDOT.

ARTICLE IV. MISCELLANEOUS

A. Amendments. The NCDOT and Grantor may amend this Conservation Easement, Temporary Access Easement, or Permanent Access Easement only by a jointly executed written agreement, and provided that no amendment will be allowed that is inconsistent with the purposes stated herein, and provided that it is approved by the USACE.

B. Exhibits. The attached Exhibit A, and Exhibit B, are incorporated in and made a part of this instrument by reference. The parties acknowledge that the Conceptual Restoration Plan, developed by NCDOT will be provided later, a copy of which will be on file at the office of the NCDOT, describes the plan for mitigation activities in the Conservation Easement Area.

C. Title. The Grantors covenant and represent that the Grantors are the sole owner and are seized of the Property in fee simple and have good right to grant and convey the aforesaid Conservation Easement and Temporary and Permanent Access Easements of Ingress and Egress; that the Conservation Easement Area and Temporary and Permanent Access Easements are free and clear of any and all encumbrances, except easement and leases of record or in effect by prescriptive rights as of the date hereto, and Grantors covenant that the NCDOT shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid easements conveyed. The easements conveyed herein shall run with the land and must be made part of any transfer of title by the Grantors.

D. Notification. Except as otherwise provided herein, any notices shall be sent by registered or certified mail, return receipt requested to the parties at their addresses shown above or to other addresses as either party establishes in writing upon notification to the other.

E. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and Easements of Ingress and Egress and supersedes all prior discussions, negotiations, understandings or agreements relating to the said easements. 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 is found to be invalid, shall not be affected thereby.

F. Recording. The NCDOT shall record this instrument and any amendment hereto in timely fashion with the Office of the Register or Deeds of Mecklenburg County, North Carolina, and may re-record it at any time as may be required to preserve its right under this Conservation Easement.

G. Costs and Liabilities. The Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor. Grantor shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively, "taxes"), including any taxes imposed upon, or incurred as a result of, this Conservation Easement, and shall furnish NCDOT with satisfactory evidence of payment upon request.

H. Construction of Terms. This Conservation Easement shall be construed to promote the purposes of the North Carolina enabling statute set forth in N.C.G.S. § 121-34, which authorizes the creation of Conservation Easements for purposes including those set forth in the recitals herein, and the conservation purposes of this Conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.

I. Conservation Purpose. The NCDOT, for themselves, and their successors and assigns agree that this Conservation Easement shall be held exclusively for conservation purposes. The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, provided, however, that the NCDOT hereby covenants and agrees that in the event they transfer or assign this Conservation Easement they hold under, the organization receiving the interest will be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, which is organized or operated primarily for one of the conservation purposes specified in Section 170(h)(4)(A) and section 2301 of the Internal Revenue Code, and the NCDOT 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.

TO HAVE AND TO HOLD the aforesaid Conservation Easement and Easement of Ingress and Egress unto the NORTH CAROLINA DEPARTMENT of TRANSPORTATION, its successors and assigns, forever. The rights and obligations set forth herein shall inure to and be binding upon the Grantor and the NCDOT, their heirs, executors, assigns and successors in title or interest.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals and caused this instrument to be signed in their respective names by authority duly given, the day and year first above written.

BACK CREEK II DEVELOPERS, LLC
by: **Reed Enterprises of Charlotte, Inc., Manager**

By: [Signature]
Daniel H. Fishar, President

Attest: [Signature]
Daniel Archer, Assistant Secretary

NCDOT:
ACCEPTED FOR THE DEPARTMENT OF TRANSPORTATION BY:

[Signature]
DK

ASS'T MANAGER OF RIGHT OF WAY

STATE OF NORTH CAROLINA, MECKLENBURG COUNTY

I, Kathleen B. McClune, a Notary Public in and for said County and State, certify that **Daniel Archer**, personally came before me this day and acknowledged that he is Assistant Secretary of **Reed Enterprises of Charlotte, Inc., Manager of Back Creek II, Developers, LLC**, a limited liability company, and that, by authority duly given and as the act of the Corporation, the foregoing instrument was signed in its name by its President, and attested by himself as its Assistant Secretary on behalf of the limited liability company.

Witness my hand and notarial seal this 14 day of May

MY COMMISSION EXPIRES: 6-13-2006 Kathleen B. McClune
NOTARY PUBLIC



The foregoing Certificate(s) of _____, Notaries/Notary Public, is/are certified to be correct. This instrument and this certificate are duly registered at the date and time and in the Book and Page shown on the first page hereof. This the ___ day of _____, 2002.

Register of Deeds For _____ County

BY: _____
Deputy/Assistant Register of Deeds

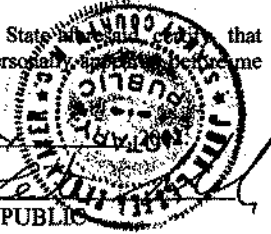
STATE OF NORTH CAROLINA, STANLY COUNTY.

I, JON LESTER SHOEMAKER, a Notary Public of the County and State of North Carolina, that A. D. ALLISON, JR. ASST. MANAGER OF RICH OF GRANTOR personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official stamp or seal, this the 21 day of May

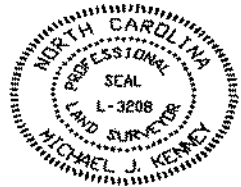
My Commission Expires: 7/22/05


NOTARY PUBLIC

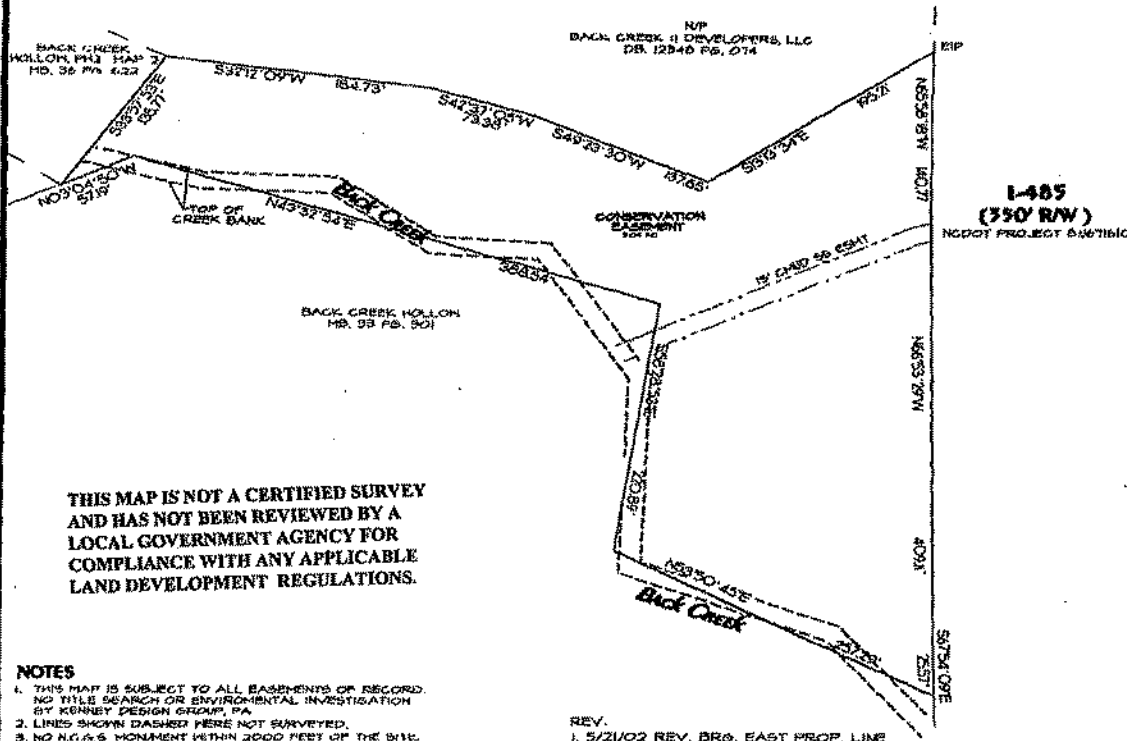


"EXHIBIT A"

I, MICHAEL J. KENNEY, CERTIFY THAT THIS PLAT WAS DRAWN UNDER MY SUPERVISION FROM AN ACTUAL SURVEY MADE UNDER MY SUPERVISION (DEED DESCRIPTION RECORDED IN BK 12306 PG 7.4.); THAT THE BOUNDARIES NOT SURVEYED ARE CLEARLY INDICATED AS DRAWN FROM INFORMATION FOUND IN BK _____ PG _____ THAT THE RATIO OF PRECISION AS CALCULATED IS 1:10,000; THAT THIS PLAT IS PREPARED IN ACCORDANCE WITH GS 47-30 AS AMENDED. WITNESS MY ORIGINAL SIGNATURE, REGISTRATION NO., AND SEAL THIS 11TH DAY OF APRIL, 2002.



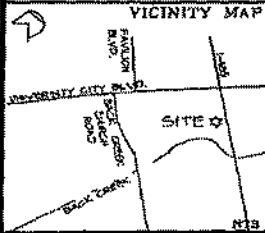
SIGNED: M. J. Kenney



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. THIS MAP IS SUBJECT TO ALL EASEMENTS OF RECORD. NO TITLE SEARCH OR ENVIRONMENTAL INVESTIGATION BY KENNEY DESIGN GROUP, PA.
2. LINES SHOWN DASHED WERE NOT SURVEYED.
3. NO N.C.A.S. MONUMENT WITHIN 2000 FEET OF THE SITE.



EASEMENT MAP
 5.09 AC. TRACT FOR CONSERVATION ESM'T
 FOR NORTH CAROLINA DEPT. OF TRANSPORTATION
 City of Charlotte, Mecklenburg County, North Carolina
 PROPERTY OF: BACK CREEK II DEVELOPERS, LLC
 5709 PROVIDENCE GLEN ROAD
 CHARLOTTE, NC 28270

SCALE:	1" = 100'
DATE:	4/1/02
LOT AREA:	5.09 AC
TAX ID:	051-151-09
DRAWN BY:	M.J.K.
CHECK REF:	SEE NOTES

FLOOD CERTIFICATION
 THIS IS TO CERTIFY THAT THIS PROPERTY IS
 LOCATED IN A SPECIAL FLOOD HAZARD AREA AS SHOWN
 ON FIRM COMMUNITY PANEL 22102B-0120B
 DATED: MAR. 2, 1995

KENNEY DESIGN GROUP, PA
 1315 GREENWOOD CLIFF
 CHARLOTTE, NORTH CAROLINA 28204
 PH: 704/377-6088 FAX: 704/377-6097

"EXHIBIT B"

Conservation Easement

Being a tract of land in the City of Charlotte, Mecklenburg County, NC, and a portion of the property owned by Back Creek II Developers, LLC (db 12348 pg 074) and being further described as beginning at an iron, the common corner of the Back Creek Presbyterian Church (db 8877 pg 168) and Back Creek II Developers, LLC (db 12348 pg 074) properties as they abut the right-of-way of I-485, thence S 65-58-18 E, 365.25 feet to a iron, said iron being the Point of Beginning. Thence S 13-13-34 E, 195.21 feet to an iron, Thence running parallel with Back Creek for 3 calls, 1) S 49-23-30 W, 137.65 ft. to an iron, 2) S 42-37-05 W, 73.38 feet to an iron, 3) S 32-12-09 W, 184.73 feet to an iron. Thence crossing the creek S 33-57-53 E, 135.77 feet to a point, Thence with the common line of Mecklenburg County Parks and Recreation Dept. (mb 33 pg 301) N 03-04-50 W, 57.19 feet to a point in the creek. Thence running with the creek for 3 calls, 1) N 43-32-54 E, 388.54 feet to an iron, 2) S 58-28-53 E, 220.89 feet to a point in the creek, 3) N 53-50-45 E, 257.29 feet to a point on the northern bank. Thence continuing with the right-of-way of I-485 for 3 calls: 1) N 67-54-09 W, 25.57 feet to an iron, 2) N 66-53-29 W, 409.11 feet, to an iron 3) N 65-58-18 W, 140.77 feet to an iron and the point of beginning. Said tract containing 3.09 acres more or less, as surveyed by Michael J. Kenney, PLS, dated 4/7/02.



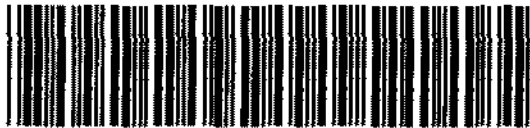
JUDITH A. GIBSON
REGISTER OF DEEDS , MECKLENBURG COUNTY
COUNTY & COURTS OFFICE BUILDING
720 EAST FOURTH STREET
CHARLOTTE NC 28202

Filed For Registration: 05/22/2002 12:09 PM
Book: RE 13612 Page: 232-241
Document No.: 2002099468
ESMT 10 PGS \$38.00
NC REAL ESTATE EXCISE TAX: \$59.00
Recorder: EMEM DREHER

State of North Carolina, County of Mecklenburg

The foregoing certificate of KATHLEEN B MCCLURE , JOHN LESTER SHOEMAKER Notaries are certified to be correct. This 22 ND of May 2002

JUDITH A. GIBSON, REGISTER OF DEEDS By: Emem Dreher
Deputy/Assistant Register of Deeds



2002099466

