



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

NOV 18 2010

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dan Kemp, Associate General Counsel
Progress Energy Service Company, LLC
401 South Wilmington Street
Raleigh, North Carolina 27601

SUBJ: Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc.
Docket Number CWA-04-2010-5134(b)

Dear Mr. Kemp:

Enclosed please find a fully executed Consent Agreement and Final Order (CA/FO) issued pursuant to Section 311(b)(6)(B)(ii) of the Clean Water Act, 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990.

Please note: According to paragraph 13 of this CA/FO, no later than 30 days after the effective date of this CA/FO, the penalty of \$49,250.00 is due. Additionally, according to Exhibit A referenced in Paragraph 17 of this CA/FO, no later than 180 days after the effective date of this CA/FO, the Respondent must complete the Supplemental Environmental Project as outlined.

Thank you for your assistance in the resolution of this matter. Please feel free to contact me at (404) 562-8313, or contact Nancy McKee at (404) 562-8674, if you have any additional questions or comments.

Sincerely,

A handwritten signature in cursive script that reads "Alan Farmer".

G. Alan Farmer, Director
RCRA Division

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF	)	CWA SECTION 311 CLASS II
	)	CONSENT AGREEMENT AND
Carolina Power & Light Company	)	FINAL ORDER
d/b/a Progress Energy Carolinas, Inc.	)	UNDER 40 C.F.R. § 22.13(b)
410 Wilmington Street)	
Raleigh, North Carolina 27601)	
	)	Docket No.: CWA-04-2010-5134(b)
Respondent)	
<hr/>		

EPA REGION 4
2010/07/15 11:08:55
INVESTIGATIVE DIVISION

Legal Authority

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 311(b)(6)(B)(ii) of the Clean Water Act ("Act"), 33 U.S.C. § 1321(b)(6)(B)(ii), as amended by the Oil Pollution Act of 1990, and under the authority provided by 40 C.F.R. §§ 22.13(b) and 22.18(b)(2). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region 4, who in turn has delegated these authorities to the Director, RCRA Division, of EPA, Region 4, pursuant to Clean Water Act delegation 2-52-A ("Complainant").

Consent Agreement

Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this Consent Agreement and Final Order ("CA/FO"), and Respondent

hereby agrees to comply with the terms of this CA/FO. For purposes of this CA/FO and settlement of this action, Respondent admits to the jurisdictional statements contained herein.

Stipulations

The parties, in their own capacity or by their attorneys or other authorized representatives, hereby stipulate:

1. Respondent, Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., is a corporation organized under the laws of the State of North Carolina. The Respondent is a person within the meaning of Sections 311(a)(7), 33 U.S.C. § 1321(a)(7).

2. Respondent is the "owner/operator" of an "onshore facility" within the meaning of Section 311(a)(6) and (10) of the Act, 33 U.S.C. § 1321(a)(6) and (10), which is a transmission substation located at 5201 Knightdale Eagle Rock Road, Knightdale, Wake County, North Carolina (the facility).

3. Stormwater from the facility drains to an unnamed creek, which is a tributary to Mark's Creek, which flows to the Neuse River, which flows to the Atlantic Ocean. Mark's Creek is a navigable water as defined in Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 110.1 and therefore is subject to the jurisdiction of Section 311 of the Act.

4. Section 311(b)(3) of the Act, 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in such quantities that have been determined may be harmful to the public health or welfare or environment of the United States.

5. For purposes of Section 311(b)(3) and (b)(4) of the Act, 33 U.S.C. § 1321(b)(3) and (b)(4), discharges of oil that may be harmful to the public health or welfare or environment of the United States are defined in 40 C.F.R. § 110.3 to include discharges of oil that (1) violate

applicable water quality standards, (2) cause a film or a sheen upon or discoloration of the surface of the water or adjoining shorelines or (3) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines.

Allegations

Complainant alleges, and Respondent neither admits nor denies, that:

6. On April 15, 2007, Respondent discharged approximately 16,550 gallons of “oil,” or 10-C Mineral Oil, as that term is defined in Section 311(a)(1) of the Act, 33 U.S.C. § 1321 (a)(1), from its facility into or upon Mark’s Creek and adjoining shorelines.

7. The discharge occurred when a 500 kilovolt transformer failed as a result of a power surge during severe weather. The transformer had the capacity to hold 18,886 gallons of oil. As a result of the transformer damage, it was estimated that 16,550 gallons of oil was released into secondary containment. However, the secondary containment was not adequate because a buried pipe in the containment structure caused the oil to discharge to a drainage ditch that drained offsite. As a result, oil discharged from the facility through an unnamed creek to Mark’s Creek, and traveled at least 1.5 miles from the facility.

8. Respondent’s April 15, 2007, discharge of oil from its facility into or upon Mark’s Creek caused a sheen upon or discoloration of the surface of Mark’s Creek and, therefore, was in a quantity that has been determined may be harmful under 40 C.F.R §110.3, in violation of Section 311(b)(3) of the Act.

Waiver of Rights

9. Respondent waives the right to a hearing under Section 311(b)(6)(B)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(B)(ii), to appeal any Final Order in this matter under

Section 311(b)(6)(G)(ii) of the Act, 33 U.S.C. § 1321(b)(6)(G)(ii), and consents to the issuance of a Final Order without further adjudication.

10. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this Consent Agreement or the Final Order.

Penalty

11. The Complainant proposes, and Respondent consents to, the assessment of a civil penalty of Forty-Nine Thousand, Two Hundred Fifty Dollars (\$49,250.00) and to perform the Supplemental Environmental Project (SEP) described herein, which shall constitute a full and final settlement and resolution of all of the causes of action alleged in this Consent Agreement.

12. By signing this Consent Agreement, Respondent certifies that the violation alleged in this Consent Agreement has been corrected.

Payment Terms

Based on the foregoing, the parties, in their own capacity or by their attorneys or authorized representatives, hereby agree that:

13. No later than thirty (30) days after the effective date of the Final Order, the Respondent shall pay the penalty amount by means of a cashier's check, certified check, Electronic Funds Transfer (EFT), or by Automated Clearinghouse (ACH) (also known as REX or remittance express). If paying by check, the check shall be payable to: United States Environmental Protection Agency, bearing the notation "OSLTF-311" and the facility name and docket number for this matter shall be referenced on the face of the check. If the Respondent

sends payment by the U.S. Postal Service, the payment shall be addressed to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197

If the Respondent sends payment by non-U.S. Postal Service express mail delivery, the payment shall be sent to:

U.S. Bank
Government Lockbox 979077
U.S. Environmental Protection Agency, Fines and Penalties
1005 Convention Plaza
St. Louis, Missouri 63101

If paying by EFT, the Respondent shall transfer the payment to:

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D 68010727 Environmental Protection Agency"

If paying by ACH, the Respondent shall remit payment to:

PNC Bank
ABA: 051036706
Account Number: 310006
CTX Format Transaction Code 22 – checking
U.S. Environmental Protection Agency
808 17th Street, N.W.
Washington, D.C. 20074

14. Respondent shall submit a copy of the payment to the following addresses:

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

and to:

Alan Newman, Acting Chief
North RCRA and OPA Enforcement and Compliance Section
RCRA Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

15. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 26 U.S.C. § 162(f).

16. Respondent's failure to pay the penalty assessed by the Final Order in full by its due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, attorney's fees, costs, and an additional quarterly nonpayment penalty pursuant to Section 311(b)(6)(H) of the Act, 33 U.S.C. § 1321(b)(6)(H). In any such collection action, the validity, amount, and appropriateness of the penalty agreed to herein shall not be subject to review.

Supplemental Environmental Project

17. Respondent shall complete the SEP described in the attached Exhibit A (which is incorporated herein by reference) in accordance with the schedule included therein. The parties agree that performance of the SEP is intended to secure significant environmental benefits.

18. The total expenditure for the SEP shall not be less than Two Hundred Eleven Thousand Dollars (\$211,000.00). Respondent shall include documentation of the expenditures made in connection with the SEP as a part of the SEP Completion Report.

19. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state or local law or regulation. Additionally, Respondent is not required to perform or develop the SEP by any other

agreement in any other case, by any grant, or as injunctive relief in this or any other case.

Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

20. Respondent shall submit a SEP Completion Report within one hundred eighty (180) days after the effective date of this CA/FO to:

Alan Newman, Acting Chief
North RCRA and OPA Enforcement and Compliance Section
RCRA Division
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

21. The SEP Completion Report shall contain the following information:

- a. A detailed description of the SEP as implemented;
- b. A description of any operating problems encountered and the solutions thereto;
- c. Itemized costs;
- d. Certification that the SEP has been fully implemented pursuant to the

provisions of this CA/FO; and

- e. A description of the environmental benefits resulting from the implementation of the SEP.

22. In itemizing costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation," includes invoices, purchase orders, settlement statements or other documentation that specifically identifies and itemizes the

individual costs of the goods, services, or real property for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

23. Respondent shall maintain legible copies of documentation of the underlying research and data for any and all documents or reports submitted to EPA pursuant to this CA/FO and shall provide the documentation of any such underlying research and data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, the SEP Completion Report, submitted to EPA pursuant to this CA/FO, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report is true, accurate, and not misleading by signing the following statement:

“I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment.”

24. After receipt of the SEP Completion Report described in Paragraphs 20-22 above, EPA will notify Respondent, in writing, (a) of any deficiencies in the SEP Completion Report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; (b) that EPA has concluded that the SEP has been completed satisfactorily, or (c) that EPA has determined that the SEP has not been completed satisfactorily and that it is seeking, or may seek, stipulated penalties in accordance with Paragraph 26 herein.

25. If EPA elects to exercise option (a) in Paragraph 24 above, i.e., if the SEP Completion Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP Completion Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision to Respondent on the adequacy of the completion of the SEP, which decision shall be final and binding upon Respondent, except as otherwise expressly provided herein. In the event the SEP is not completed as contemplated herein, as determined by EPA, EPA may seek stipulated penalties in accordance with Paragraph 26 herein.

26. In the event that Respondent fails to comply with any of the terms or provisions of this CA/FO relating to the performance of the SEP as described in Appendix A and/or to the extent that the actual expenditures for the SEP do not equal or exceed the cost of the SEP as required in Paragraph 18 herein, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

a. Except as provided in subparagraph (b) below, if the SEP is not completed satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty to the United States in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00).

b. If the SEP is not completed satisfactorily pursuant to this CA/FO, but EPA determines that Respondent: (i) made good faith and timely efforts to complete the SEP; and

(ii) certifies, with supporting documentation, that at least ninety percent (90%) of the amount of the money required to be spent in Paragraph 18 herein was expended on the SEP, Respondent shall not be liable for any stipulated penalty under this paragraph.

c. If the SEP is completed satisfactorily in accordance with Appendix A, but Respondent spent less than ninety percent (90%) of the amount of money required to be spent in Paragraph 18 herein on the SEP, Respondent shall pay a stipulated penalty to the United States in the amount of Fifteen Thousand Dollars (\$15,000.00).

d. If the SEP is completed pursuant to this CA/FO, and Respondent spent at least ninety percent (90%) of the amount of money required to be spent in Paragraph 18 herein on the SEP, Respondent shall not be liable for any stipulated penalty under this paragraph.

e. For failure to submit the SEP Completion Report required by Paragraphs 20-22 above, Respondent shall pay a stipulated penalty in the amount of One Thousand Dollars (\$1,000.00) for each day after the due date until the report is submitted.

28. The determinations of whether the SEP has been satisfactorily completed and whether Respondent has made a good faith, timely effort to implement the SEP shall be in the reasonable discretion of EPA.

29. Respondent shall pay stipulated penalties not more than thirty (30) days after receipt of a written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraphs 13 and 14 above. Interest and late charges shall be paid as stated in Paragraph 16 above. If the Respondent fails to pay such amount as EPA asserts that Respondent owes pursuant to this CA/FO based upon a determination by

EPA that Respondent failed to complete or to substantially complete the SEP to the satisfaction of EPA and if EPA initiates an action to collect such amount (including stipulated penalties and all additional interest, charges, penalties and other amounts as described in this CA/FO), it shall be presumed in such action that such determination by the EPA is reasonable; provided that, Respondent may raise as a defense in such action that such determination by EPA was arbitrary and capricious and therefore not a binding determination upon Respondent. If such defense is raised, Respondent shall have the burden of proving that EPA's determination was arbitrary and capricious and that the SEP was completed or substantially completed satisfactorily by Respondent. In such action, the provisions of this Paragraph shall be stipulated as admissible evidence and shall be binding upon EPA and Respondent in all regards.

30. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language, "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for alleged violations of the Clean Water Act."

31. Respondent hereby agrees not to claim any funds expended in the performance of the SEP as a deductible business expense for purposes of Federal taxes.

General Provisions

32. Complainant reserves the right, pursuant to 40 C.F.R. § 22.45(c)(4)(iii), to withdraw from this Consent Agreement and proposed Final Order within 15 days of receipt of a Commenter's petition, pursuant to 40 C.F.R. § 22.45(c)(4)(ii), requesting that the Regional

Administrator set aside the Consent Agreement and proposed Final Order on the basis that material evidence was not considered.

33. The Final Order shall be binding upon Respondent and Respondent's officers, directors, agents, servants, employees, and successors or assigns.

34. The Final Order does not constitute a waiver, suspension or modification of the requirements of Section 311 of the Act, 33 U.S.C. § 1321, or any regulations promulgated thereunder, and does not affect the right of the Administrator or the United States to pursue any applicable injunctive or other equitable relief or criminal sanctions for any violation of law. Payment of the penalty pursuant to this Consent Agreement resolves only Respondent's liability for federal civil penalties for the alleged violation and facts stipulated to and alleged herein.

35. The undersigned representative of Respondent hereby certifies that he/she is fully authorized to enter into the terms and conditions of this Consent Agreement and attached Final Order and to execute and legally bind Respondent to this Consent Agreement and attached Final Order.

Effective Date

36. This Consent Agreement and attached Final Order is effective upon the filing of the Final Order with the Regional Hearing Clerk.

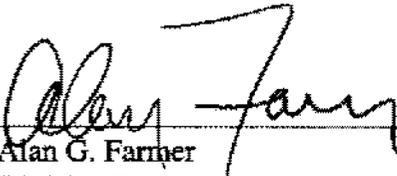
Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc.

Date: 7/30/10

Signature: 
Caren Anders
Vice President

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/9/10

Signature: 
Alan G. Farmer
Division Director
RCRA Division

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

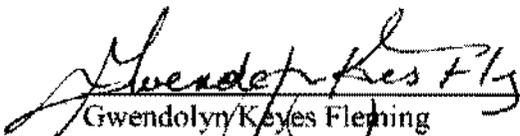
IN THE MATTER OF	)	CWA SECTION 311 CLASS I
	)	CONSENT AGREEMENT AND
Carolina Power and Light Corporation	)	FINAL ORDER
d/b/a Progress Energy Carolinas, Inc.	)	UNDER 40 C.F.R. § 22.13(b)
410 Wilmington Street)	
Raleigh, North Carolina 27601)	
)	
Respondent	)	Docket No.: CWA-04-2010-5134(b)
<hr/>		

FINAL ORDER

Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. § 1321(b)(6) and the delegated authority of the undersigned, and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination, or Suspension of Permits, codified at 40 C.F.R. Part 22, the forgoing Consent Agreement is hereby approved and incorporated by reference into this Final Order, and the Stipulations by the parties and Allegations by the Complainant are adopted as Findings in this Final Order.

Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., the Respondent is ordered to comply with the terms of the Consent Agreement, Docket No. CWA-04-2010-5134(b).

Date: 11/10/10 _____


Gwendolyn Keyes Fleming
Regional Administrator

In the Matter of Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc.
Docket No.: CWA-04-2010-5134(b)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the Foregoing Consent Agreement and Final Order, in the matter of Carolina Power & Light Company d/b/a Progress Energy Carolinas, Inc., Docket No. CWA-04-2010-5134(b), on the parties listed below in the manner indicated:

Dan Kemp
Associate General Counsel
Progress Energy Service Company, LLC
410 S. Wilmington Street
Raleigh, North Carolina 27601

Via Certified Mail - Return Receipt Requested

Bonnie Sawyer, Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
404-562-9539

Via EPA's Internal Mail

Quantindra Smith, Environmental Protection Specialist
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
404-562-8564

Via EPA's Internal Mail

Dated this 16 day of November 2010


Patricia A. Bullock, Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
404-562-9511

Exhibit A

SUPPLEMENTAL ENVIRONMENTAL PROJECT

Purpose

The Supplemental Environmental Project ("SEP") will involve Respondent's purchase and fee title acquisition of 14.591 acres of undeveloped forest and historical farmland located in Little River Township, Wake County, North Carolina (the "Land") from Opal C. Vick and Wm. C. Vick Construction Co (collectively the "Vicks"). Immediately upon acquisition of the Land, the Respondent, for no monetary consideration, will donate and convey fee title to the Land to Wake County, a political subdivision of the State of North Carolina for inclusion in the Wake County Public Open Space Preservation Program ("WCPOSPP"). The Land is more particularly described as "Tract 5" on the survey attached, as Exhibit B, and incorporated herein by reference.

To protect and maintain the Land's significant environmental and open space attributes in perpetuity, Respondent will convey fee title to the Land to Wake County by a deed that will be encumbered by and include express conservation restrictions (the "Deed with Conservation Restrictions"). The purpose of these conservation restrictions is to (1) preserve, enhance, restore, and maintain the natural resources of the Land; (2) provide habitat for native plants and animals; (3) improve and maintain water quality in Hominy Creek and the future Little River Reservoir (both further described below); (4) control runoff of sediment and prevent erosion and non-point source pollution from entering Hominy Creek and the future Little River Reservoir. The restrictions set forth in the Deed with Conservation Restrictions shall continue as servitudes running with the Land in perpetuity to ensure that the Land's environmental attributes and benefits will be protected and maintained; and shall prohibit any activity, use or development of the Land inconsistent with the aforesaid environmental protections and purposes.

Scope

The Land is an ecologically and environmentally significant tract of undeveloped land located within the Little River Water Supply Watershed of the Neuse River Basin in eastern Wake County.¹ To meet projected water demands in central and eastern Wake County, the City of Raleigh has proposed constructing a new drinking water reservoir on the Little River (the "Little River Reservoir") that would benefit Raleigh and the six towns that receive water from Raleigh, which include Garner, Knightdale, Rolesville, Wake Forest, Wendell and Zebulon. Subject to receipt of all required permits, construction of the Little River Reservoir is anticipated to begin in 2016. The Land is entirely within Wake County's future Little River Water Supply

¹ The Little River Water Supply Watershed is adjacent to the Marks Creek watershed where the alleged violation occurred that is the subject of this Consent Agreement and Final Order. The Land is located approximately 8.7 miles from Respondent's Knightdale substation where the spill occurred.

Exhibit A

Watershed “critical area”, the most sensitive portion of the watershed adjacent to the reservoir and its intake where risk associated with point and non-point source pollution is greatest.²

The Land is in close proximity to Hominy Creek, which joins the Little River, a tributary of the Neuse River.³ The Land will serve as a natural, undisturbed buffer for Hominy Creek, which will feed into the proposed future Little River Reservoir. The North Carolina Department of Environment and Natural Resources (“NCDENR”) has supplementally classified Hominy Creek as nutrient sensitive water--meaning it is in need of additional nutrient management because of excessive growth of microscopic or macroscopic vegetation.⁴ Protecting the Land in its natural condition will allow it to serve as a natural treatment system that can filter elevated levels of nutrients in storm water and reduce pollutant loading into Hominy Creek, Little River and the future Little River Reservoir.

The Little River Watershed also supports the Dwarf Wedgemussel, a federally endangered species, which is known to exist in the Little River. Protecting the Land in its natural condition and thereby reducing pollutant loading into Hominy Creek should assist with protecting aquatic habitat for the Dwarf Wedgemussel. The Land also lies between two stream corridors identified as ecologically important by the Natural Heritage Program (“NHP”) of the NCDENR, specifically Buffalo Creek to the west and Little River to the east. Portions of both stream corridors have been designated by the NHP as “Significant Natural Heritage Areas”.⁵ In addition, both stream corridors have been identified as important sites for conservation by the “Triangle Greenprint,” a regional conservation plan that was unanimously supported by resolution of the Wake County Board of Commissioners in May 2002. If other natural lands were protected to connect the Land to the Buffalo Creek floodplain to the west, the Land could provide a key link in a contiguous wildlife corridor linking these ecologically important riparian ecosystems. According to NCDENR’s Conservation Planning Tool, the Land and adjacent areas have a medium to high conservation value, meaning they have the potential to provide good habitat for a wide range of species (e.g., fish, mussels, reptiles, amphibians, and wading birds).

The Land also lies within Wake County’s designated Hominy Creek Open Space Acquisition Corridor and is adjacent to County-owned property already managed by the WCPOSPP, thus providing connectivity and greater open space and water quality benefits to the

² The proposed critical area for the Little River Water Supply Watershed is that area within ½ mile, plus 300 feet from the edge of the proposed reservoir’s flood pool elevation contour line.

³ The centerline of Hominy Creek is shown on the attached survey north of the Land.

⁴ See 15A N.C. Admin. Code 2B .0223 and 2B .0232.

⁵ A “Significant Natural Heritage Area” is an area of land or water identified by the NHP as being important for conservation of the State’s biodiversity. They contain one or more Natural Heritage elements - high-quality or rare natural communities, rare species, and special animal habitats.

Exhibit A

Hominy Creek Open Space Acquisition Corridor. Wake County has a long history of preserving open space within the County. The WCPOSPP has protected over 4,500 acres across Wake County, partnering with numerous State and local agencies to accomplish the WCPOSPP's goals of (1) the preservation of natural resources and habitat; (2) the managed production of resources forest and farmland); (3) outdoor recreation; (4) preservation of historical and cultural property; (5) protection of scenic landscapes; and (6) protection of public health, safety and welfare. It is Wake County's intent, through the WCPOSPP, to achieve these goals by acquiring, maintaining and retaining open space lands in trust permanently for current and future generations.⁶

Wake County has developed a GIS-based prioritization model to help the County identify future open space acquisitions with regard to the WCPOSPP's goals. The Land, together with an adjacent 113 acre tract also owned by the Vicks, ranked in the top 1% of all parcels Wake County evaluated and touches upon a number of the WCPOSPP's goals, especially the protection of stream corridors, such as Hominy Creek, that flow into Little River and the future Little River Reservoir.

Respondent's performance of this SEP is in partnership with ongoing and concurrent efforts by The Trust for Public Land⁷ to purchase and acquire this adjacent 113 acre tract from the Vicks. The Trust for Public Land intends to convey this 113 acre tract to Wake County solely for conservation, environmental and natural resource protection purposes associated with the WCPOSPP and mitigation purposes required for the City of Raleigh's construction and development of the future Little River Reservoir.⁸ Thus, completion of this SEP will provide enhanced water quality and open space benefits for the Hominy Creek stream corridor, Little River and the future Little River Reservoir.

Cost

Respondent shall spend at least Two Hundred Eleven Thousand Dollars (\$211,000.00) toward the purchase of the Land to be made subject to the purposes of this SEP.

Schedule

Prior to signing and recording the Deed with Conservation Restrictions, the Respondent will submit to EPA for review and approval the Deed with Conservation Restrictions, as approved by Respondent and Wake County. EPA will review the Deed with Conservation Restrictions and approve it or provide Respondent with written comments within thirty (30) days

⁶ See Wake County Public Open Space Preservation Program Policy, Section 1.0 (February 28, 2008).

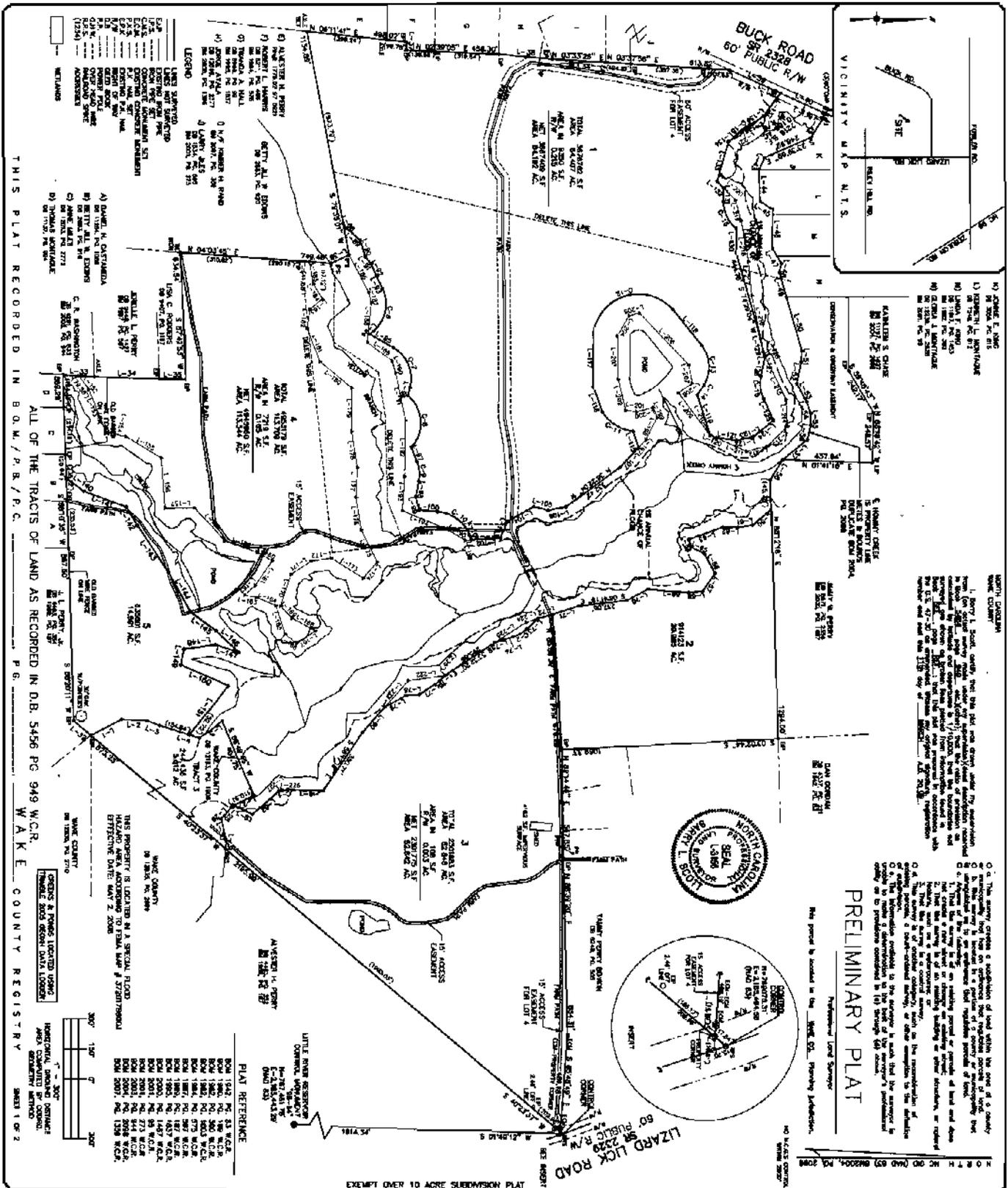
⁷ The Trust for Public Land is a national, nonprofit land conservation organization that conserves land for people to enjoy as parks, community gardens, historic sites, rural lands and other natural places.

⁸ This 113 acre tract is shown as Tract 4 on the attached survey.

Exhibit A

after receipt. If requested by Respondent, EPA will provide Respondent an opportunity to discuss EPA's written comments. Respondent shall resubmit the Deed with Conservation Restrictions to EPA within ten (10) business days after receipt of EPA's written comments. The same process shall be followed for the resubmitted Deed with Conservation Restrictions (and any subsequent related submissions by Respondent) until EPA approves the final form of the Deed with Conservation Restrictions. After EPA approves the Deed with Conservation Restrictions, Respondent will sign and record the EPA-approved Deed with Conservation Restrictions and undertake completion of the SEP as set forth herein. Respondent shall complete this SEP within one hundred and eighty (180) days after the effective date of the Order.

Exhibit B



DATE: 03-11-09
 FIELD SK: M / 19
 SURVEYED BY: DS
 REVISED:
 DATE: 03-08-10
 DATE: 05-19-10

SUBDIVISION OF WILLIAM L. VICK CONSTRUCTION COMPANY & WILLIAM L. VICK AND WIFE OPAL C. VICK PROPERTY

ZONED: R-40 TAX MAP: PARCEL(S):
 TOWNSHIP: LITTLE RIVER COUNTY: WAKE

PLAT(S): 1786.01 05 4274, 1786.01 26 7406 &
 PK(S) 1786.01 17 9905
 STATE OF NORTH CAROLINA, U.S.A.

B. L. SCOTT & CO.
 PROFESSIONAL LAND SURVEYORS
 1000 W. WILSON ST. SUITE 100
 RALEIGH, NC 27601
 JOB NO. 09-03-06A

