

Prepared by and return to  
Michael Parker

BOOK 1421 PAGE 151

Tax Parcel ID# \_\_\_\_\_

6.13.10  
9851-61-2652

MAPLEVIEW FARM EASEMENT

STATE OF NORTH CAROLINA  
COUNTY OF ORANGE

GRANT OF CONSERVATION EASEMENT  
AND DEVELOPMENT RIGHTS

This Grant of Conservation Easement and Development Rights ("Conservation Easement") is made on this 28<sup>th</sup> day of December, 1995, by ROBERT P. NUTTER and wife, AUBREY C. NUTTER, who joins solely for the purpose of releasing her marital interest in the property, ("Grantor"), and TRIANGLE LAND CONSERVANCY, a non-profit North Carolina corporation, ("Grantee") for the purpose of forever conserving the open space character, agricultural productivity and scenic qualities of the subject properties.

Witness that:

The Grantor is the sole owner in fee simple of the farm property ("Property") legally described in Exhibit A, attached hereto and incorporated by this reference, which consists of Tract I, being approximately 52.960 acres and Tract II, Being approximately 54.106 acres, all located in the Bingham Township, Orange County, State of North Carolina and being a portion of Mapleview Farm.

The Property is primarily open farmland all of whose soils have been classified as "prime farmland" or "farmland of statewide or local significance" by the Natural Resource Conservation Service, U.S. Department of Agriculture because of the fertility of its soils and which has been managed as a farm since the 1930's.

The Property also has outstanding scenic qualities that can be enjoyed by the general public, namely:

- 3003.17 feet of frontage on Dairyland Road, S.R. #1177 from which long open views of Mapleview Farm can be seen;
- the visibility of every element of indigenous traditional piedmont farming including planted fields, open pastures, farm pond, barn, silo, main house and other farm buildings can be observed;

- the harmonious variety of curving tree lines, open fields, winding country roads, and silos silhouetted against the skyline;
- identification of Dairyland Road by the Transportation Advisory Subcommittee of the Orange County Planning Board in its 1988 Scenic Roads Survey; and
- description and recognition of scenic viewsheds of the Property in the 1995 Scenic Roads Study for the Scenic Road Corridors Map by the Orange County Planning Department.

The agricultural and other characteristics of the Property, its current use and state of improvement, are described in a Report entitled The Development and Preservation of Maplevue Farm, with Supplemental Appendices dated August 1995 prepared by Piedmont Planning Associates for the Grantor with the cooperation of the Grantee, and acknowledged by both to be complete and accurate as of the date hereof. Both the Grantor and the Grantee have copies of this report. It will be used by the Grantor and Grantee to assure that any future changes in the use of the Property will be consistent with the terms of this Conservation Easement. However, the Report is not intended to preclude the use of other evidence to establish the present condition of the Property if there is a controversy over its use.

The Grantor owns the entire fee simple interest in the Property, including the entire mineral estate. All holders of liens or other encumbrances upon the Property have agreed to subordinate their interests in the Property to this Conservation Easement.

The purposes of this Conservation Easement are to protect in perpetuity the open space character, agricultural productivity, watershed protection and scenic qualities of the Property (collectively the "Conservation Values"), and to assure the availability of the Property in perpetuity for agricultural use.

The conservation purposes of this easement are recognized by, and this Conservation Easement will serve, the following clearly delineated governmental conservation policies:

- The Farmland Protection Policy Act, PL. 97-98, 7 U.S.C. Sec. 4201, *et seq.*, whose purpose is "to minimize the extent to which Federal programs and policies contribute to the unnecessary and irreversible conversion of farmland to nonagricultural uses, and to assure that Federal programs are administered in a manner that, to the extent

practicable, will be compatible with State, unit of local government and private programs and policies to protect farmland;"

- the Uniform 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;" 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;"
- the special use assessment of farm and forest lands set forth in N.C.G.S. 105-277.2 *et seq.*;
- the zoning of the Property as "Rural Buffer" established in the Orange County, Chapel Hill Carrboro Joint Planning Land Use Plan (1986) (hereinafter "Land Use Plan");
- the designation of the majority of the Property as "University Lake Protected Watershed Overlay District" in the Land Use Plan;
- the Land Use Plan of Orange County with its goal to "maintain and protect land which contains valuable renewable resources such as productive agricultural";
- designation of portions of the Property as either Primary or Secondary Conservation Areas as proposed by the Orange County Planning Department.

The Grantee is a "qualified conservation organization, "as defined by the Internal Revenue Code, as evidenced by its IRS determination letter dated July 12, 1983 and, as certified by a resolution of its Board of Directors, accepts the responsibility of enforcing the terms of this Conservation Easement and upholding its conservation purposes forever.

Now, therefore, as an absolute gift, but in consideration of the restrictions contained herein, and pursuant to N.C.G.S. 121-34 *et seq.*, Grantor does hereby convey unto Grantee, its successors and assigns forever, a conservation easement and grant of development rights on and over the Property, as more particularly described, in perpetuity, and consisting of the covenants hereinafter set forth:

1. *Prohibited Acts*

Grantor promises that they will not perform, nor knowingly allow others to perform, any act on or affecting the property that is inconsistent with the preservation of the Property's open space character, agricultural productivity, watershed protection values and scenic values or with the specific covenants below. However, unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Property after any act of God or other event over which they had no other control. Grantor understands that nothing in this Conservation Easement relieves them of any obligation or restriction on the use of the Property imposed by law.

2. *Construction of Buildings and Other Structures*

The construction or reconstruction of any building or other structure, except those existing on the date of this Conservation Easement is prohibited except in accordance with paragraphs (a) through (d) below.

(a) *Fences* -- Existing fences may be repaired and replaced, and new fences may be built anywhere on the Property for purposes of reasonable and customary management of livestock and wildlife, without permission of the Grantee;

(b) *Existing Farm House, Agricultural Structures, and Improvements* -- All existing structures and other structures permitted under this Conservation Easement may be repaired, renovated, enlarged and replaced without permission of the Grantee.

(c) *New Agricultural Structures & Improvements* -- New buildings and other structures and improvements to be used solely for agricultural purposes including the processing, packaging or sale of farm products predominantly grown or raised on the Property or in the vicinity thereof, but not including any new dwelling or farm labor housing, may be built on that portion of the Property designated as the Farm Operations Envelope on Exhibit B without the written permission of the Grantee.

(d) *Single-Family Residential Dwellings* -- No more than three (3) new single-family residential dwellings, together with reasonable appurtenances such as garages, swimming pools and sheds, may be built on and subdivided from the Property in the locations designated as SR-1, SR-2 and SR-3 on Exhibit B. All such structures located at SR-1, SR-2 and SR-3 shall be contained within a building envelope of no more than seven (7) acres each. At the time that construction of such dwellings is to commence, Grantee

shall be notified so that its records can be updated. Reasonable access to and utilities for such structures are permitted.

3. *Subdivision*

The subdivision of the Property into tracts less than ten (10) acres in size, whether by physical or legal process, is prohibited except as permitted in paragraph 2(d) above. Any subdivided tract shall remain subject to the terms of this easement to ensure the continued agricultural use of the Property.

4. *Development Rights*

With the exception of buildings permitted in paragraphs 2(c) and (d) above, and permitted in paragraph 8 below, Grantor conveys to Grantee all developmental rights that are now or hereafter allocated to, implied, reserved or inherent in the Property, and the parties agree that such rights are terminated and extinguished, and may not be used on or transferred to any portion of the Property, as it now or hereafter may be bounded or described, or to any other property adjacent or otherwise, nor used for the purpose of calculating permissible lot yield of the Property or any other property.

5. *Agricultural and Conservation Practices*

All farming operations shall be conducted in accordance with Best Management Practices promulgated by the State of North Carolina and with a Natural Resource Conservation Service conservation plan that addresses soil and water conservation, pest management, floodplain protection, viewshed protection, nutrient management and habitat protection. This plan shall be updated periodically, and in any event at the time the basic type of agricultural operation on the property changes or at any time ownership of the property changes.

6. *Timber Harvesting*

Trees may be cut to control insects and disease, to prevent personal injury and property damage, and for firewood and other domestic uses, including construction of permitted buildings and fences on the Property. Trees may also be cut to clear land for cultivation or grazing of livestock, but only if done in accordance with the written conservation plan required by paragraph 5. Any commercial timber harvesting on the Property shall be conducted pursuant to the guidelines of the Forest Stewardship Program of the N.C. Forestry Department, or similar conservation-directed forestry program in the event the Forest Stewardship Program is not in existence.

7. *Mining*

The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any method that disturbs the surface of the land, is prohibited.

8. *Paving and Road Construction*

No portion of the Property shall be paved or otherwise be covered with concrete, asphalt, or any other non-permeable paving material. (For purposes of this provision, gravel shall be considered to be a permeable material.) No new roads may be built except within that portion of the Property designated as the Farm Operations Envelope or except for access roads as shown on Exhibit B.

9. *Trash*

The dumping or accumulation of any kind of trash or refuse on the property, other than farm-related trash and refuse produced on the Property, is strictly prohibited. However, this shall not prevent the storage of agricultural products and byproducts on the Property, so long as it is done in accordance with all applicable government laws and regulations, and does not otherwise impact the conservation values of the Property.

10. *Recreational Uses*

Golf courses, airstrips and helicopter pads are strictly prohibited on the Property. Other buildings and facilities for any other public or private recreational use may not be built on the Property without the advance written permission of the Grantee.

11. *Rights Retained by Grantor*

The Grantor retains the right to perform any act not specifically prohibited or limited by this Conservation Easement. These ownership rights include, but are not limited to, the right to exclude any member of the public from trespassing on the Property and the right to sell or otherwise transfer the Property to anyone they choose.

12. *Discretionary Consent*

The Grantee's consent for activities otherwise prohibited above, or for any activities requiring Grantee's consent above, may be given under the following circumstances. If, owing to unforeseen or changed circumstances, any of the activities prohibited above are deemed desirable by both the Grantor and the Grantee, the Grantee may, in its sole discretion, give permission for such activities, subject to the limitations herein. Such requests for permission, and permission for activities requiring the Grantee's consent, shall be in writing and shall describe the proposed activity in sufficient detail to allow the Grantee to judge the consistency of the proposed activity with the purpose of this Conservation Easement. The Grantee may give its permission only if it determines, in its sole discretion, that such activities (1) do not violate the purpose of this Conservation Easement and (2) either enhance or do not impair any significant conservation interests associated with the Property. Notwithstanding the foregoing, the Grantee and Grantor have no right or power to agree to any activities that would result in the termination of this Conservation Easement or to allow any additional residential structures or any commercial or industrial structures or any commercial or industrial activities not in keeping with the purposes of this Conservation Easement.

13. *Responsibilities of Grantor and Grantees Not Affected*

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 owners of the property. Among other things, this shall apply to:

(a) *Taxes* -- The Grantor shall 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 shall be solely responsible for the upkeep and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property.

14. *Enforcement*

The Grantee shall have the right to prevent and correct violations of the terms of this Conservation Easement. With seven (7) days advance written notice

received by the Grantor, the Grantee may enter the Property for the purpose of inspecting for violations. If the Grantee finds what is a violation, it may at its discretion take appropriate legal action. Except when an ongoing or imminent violation could irreversibly diminish or impair the open space character, agricultural productivity, watershed protection values, or scenic qualities of the Property, the Grantee shall give the Grantor written notice of the violation and one hundred twenty (120) days to correct it, before filing any legal action. If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction to stop it, temporarily or permanently. A court may also issue an injunction requiring the Grantor to restore the Property to its condition prior to the violation. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

15. *Transfer of Easement*

The Grantee shall have the right to transfer this Conservation Easement to any public agency or private nonprofit organization that (a) is approved by the Grantor, such approval not to be unreasonably withheld, and (b) at the time of transfer, is a "qualified organization" under Sec. 170(h) of the U.S. Internal Revenue Code, and under N.C.G.S. 121-34 *et. seq.*, and (c) the agency or organization expressly agrees to assume the responsibility imposed on the Grantee by this. If the Grantee ever ceases to exist or no longer qualifies under Sec. 170(h) or applicable state law, a court with jurisdiction shall transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility.

16. *Transfer of Property*

Any time the Property itself, or any interest in it, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing prior to the transfer of the property, and the document of conveyance shall expressly refer to this Conservation Easement.

17. *Amendment of Easement*

This easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and the Grantee's easement amendment policies, and shall comply with Sec. 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with N.C.G.S. 121-34 *et. seq.* or any regulations promulgated pursuant to that law.



18. *Termination of Easement*

If it determines that conditions on or surrounding the Property change so much that it becomes impossible to fulfill its conservation purposes, a court with jurisdiction may, at the joint request of both the Grantor and Grantee, terminate this Conservation Easement.

If condemnation of a part of the Property or of the entire Property by public authority renders it impossible to fulfill any of these conservation purposes, the Conservation Easement may be terminated through condemnation proceedings.

If the easement is terminated and the Property is sold or taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Property, as these values are determined on the date of this Conservation Easement. The Grantee shall use the proceeds consistently with the conservation purposes of this Conservation Easement.

19. *Interpretation*

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

20. *Perpetual Duration*

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 Grantee shall also apply to their respective agents, heirs executors, administrators, assigns, and all other successors as their interests may appear.

21. *Notices*

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

To Grantor:

Mr. and Mrs. Robert Nutter  
3111 Dairyland Road  
Hillsborough, North Carolina 27278

with a copy to :

D. Michael Parker, Esq.  
Cheshire & Parker  
100 N. Churton Street  
P.O. Box 100  
Hillsborough, North Carolina 27278

To the Grantee:

Triangle Land Conservancy  
P.O. Box 13031  
Research Triangle Park, North Carolina 27709

22. *Environmental Condition*

The Grantor warrants that they have no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property.

23. *Subsequent Liens on Property*

No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use this Property as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing would be subordinated to this Conservation Easement.

24. *Acceptance & Effective Date*

As attested by the Seal of the Triangle Land Conservancy and the signature of its President affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Orange County Registry of Deeds.

**To Have and To Hold,** this Grant of Conservation Easement and Development Rights unto the Grantee, its successors and assigns, forever.

In Witness Whereof, the Grantor and Grantee, intending to legally bind themselves, have set their hands and seals on the date first written above.

GRANTOR:

Robert P. Nutter (Seal)

Robert P. Nutter

Aubrey C. Nutter (Seal)

Aubrey C. Nutter

Accepted:

GRANTEE:

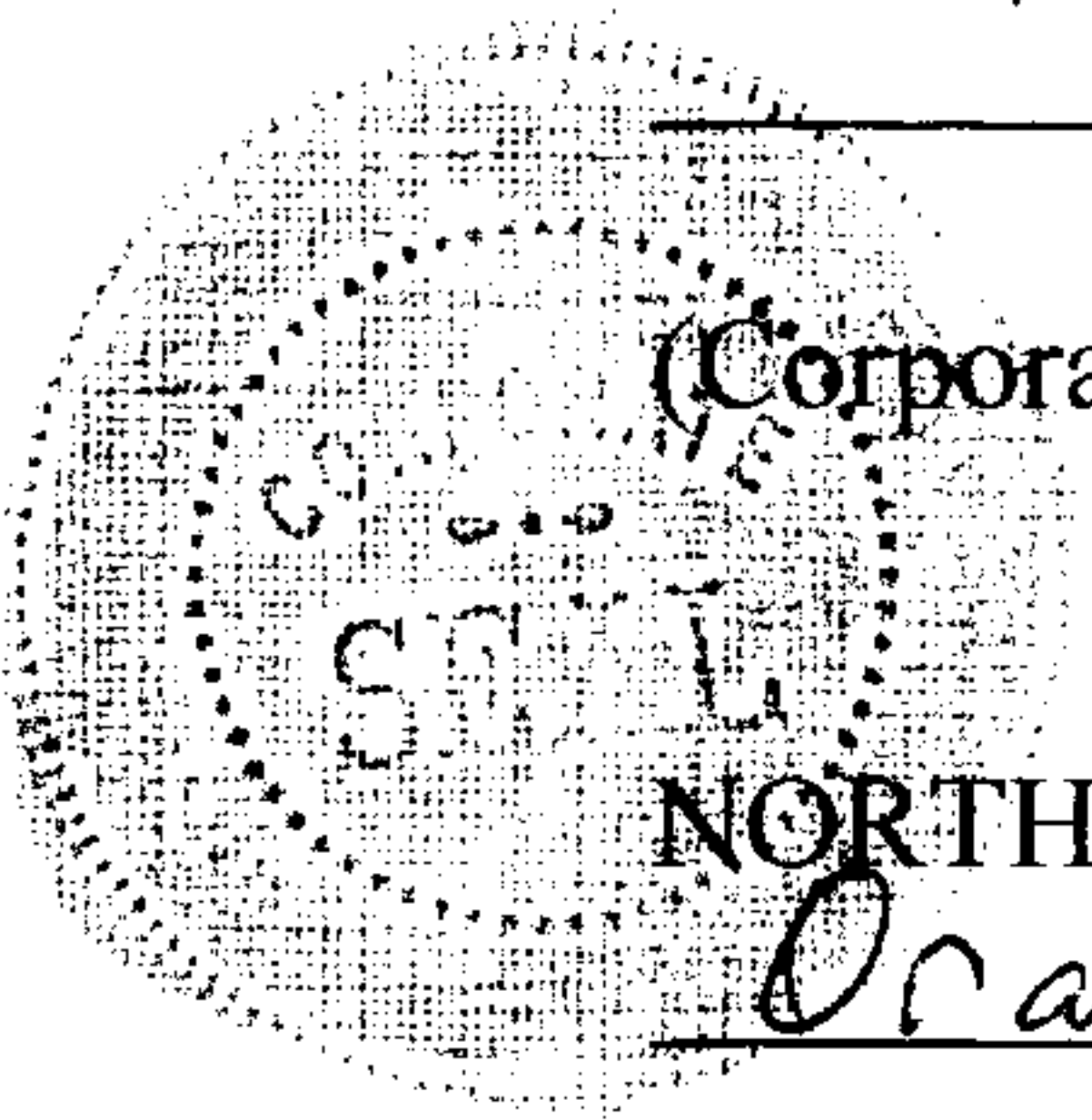
Triangle Land Conservancy, a North Carolina  
Non-profit Corporation

Attest:

Cara T. Yager  
Secretary

[Signature]  
President

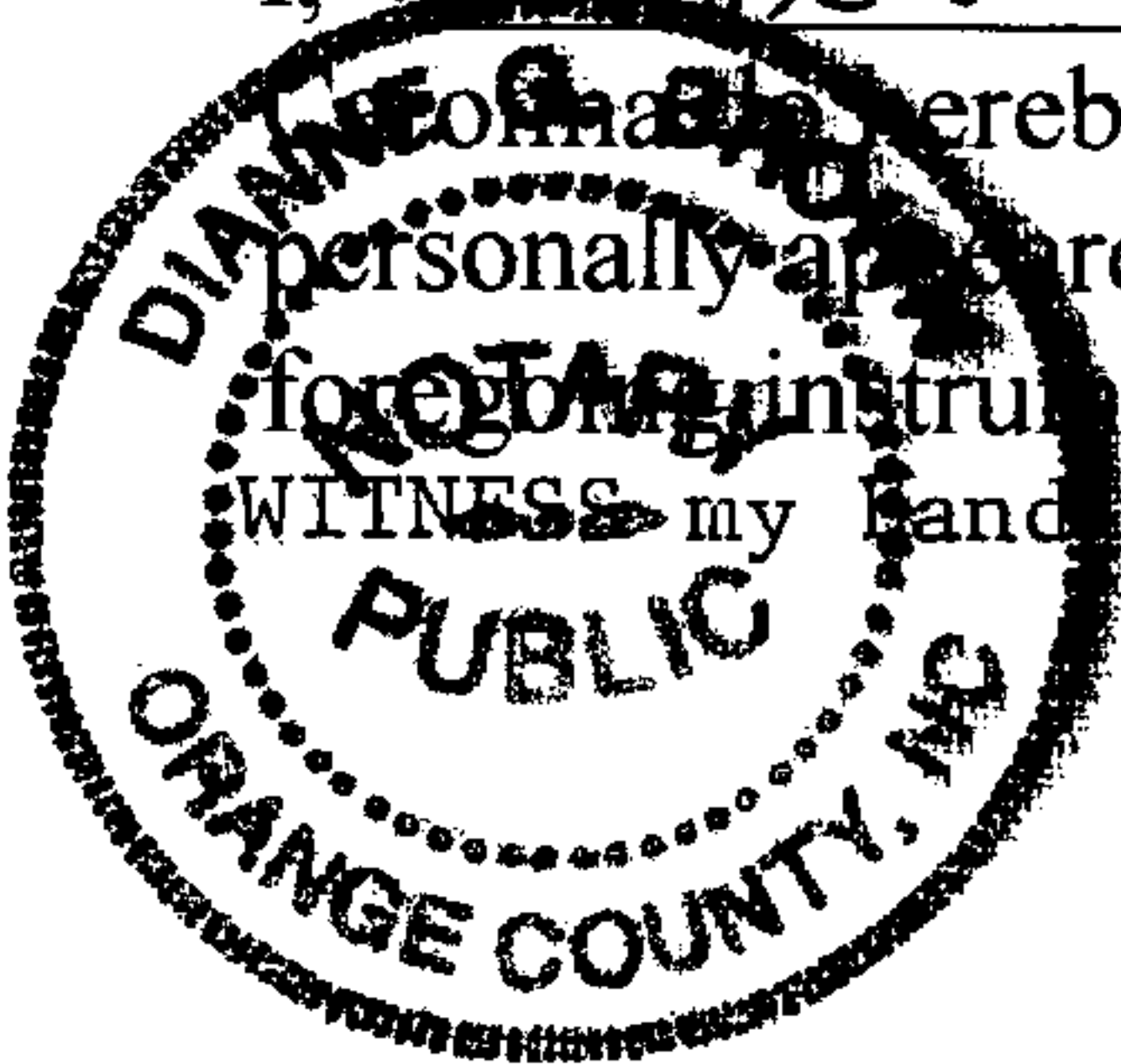
(Corporate Seal)



NORTH CAROLINA  
Orange COUNTY

I, Dianne G. Brown, a Notary Public of Orange County, North Carolina, hereby certify that Robert P. Nutter and wife Aubrey C. Nutter personally appeared before me and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and notarial seal this the 28th day of December, 1995.



Dianne G. Brown

Notary Public (SEAL)

My commission expires: 10-1-1997

P.R.  
by  
P.M.

NORTH CAROLINA  
Chatham COUNTY

I, Virginia P. Horton, a Notary Public of Chatham County, North Carolina do hereby certify that Cara T. Yager personally appeared before me this day and acknowledged that she is the Secretary of Triangle Land Conservancy, a non-profit corporation, and that by authority duly given and as act of the corporation the foregoing instrument was signed in its name by its President, sealed with its corporate seal and attested by herself as its secretary.

Witness my hand and notarial seal this the 28 day of December, 1995.



Virginia P. Horton

Notary Public (SEAL)

My commission expires: 5-27-99

STATE OF NORTH CAROLINA

NORTH CAROLINA - ORANGE COUNTY

The foregoing certificate(s) of \_\_\_\_\_

Dianne G. Brown and Virginia P. Horton,

~~A~~ Notary (or Notaries) Public of the designated Governmental units ~~is~~ (are) certified to be correct. Filed for registration

this the 28th day of December 19 95, at 12:08:20 o'clock, P.M.

in Record Book 1421 Page 151 .

Return: \_\_\_\_\_

Betty June Hayes, Register of Deeds  
By: *Priscilla O. Muse*  
Assistant/Deputy  
Register of Deeds

, Register of Deeds

Exhibits A and B (Legal Description and sketch) Attached

This instrument prepared by:

Camilla M. Herlevich  
313 North Front Street  
Suite A  
Wilmington, North Carolina 28401

Return to:

D. Michael Parker, Esq.  
Cheshire & Parker  
Post Office Box 100  
Hillsborough, NC 27278

FILED  
28 DEC 1995, at 12:08:20PM  
Book 1421, Page 151 - 165  
Betty June Hayes,  
Register of Deeds,  
Orange County, N. C.

TRACT I: LYING and being in Bingham Township, Orange County, North Carolina and being more particularly described as follows:

BEGINNING at an iron stake set at the point where the center of the right-of-way to Dairyland Road intersects the center of the right-of-way to Meadowview, a 60 foot private road right-of-way; running thence from said beginning point with the center of the right-of-way to Dairyland Road the following courses and distances: along the arc of the circle to the left having a arc of 554.99 feet, a radius of 965.00 feet, a chord of South 76° 37' 09" West, 547.37 feet and South 60° 08' 36" West 521.66 feet to an iron stake; running thence North 07° 36' 00" West 819.20 feet to an iron stake; running thence North 00° 42' 51" East 388.91 feet to an iron stake; running thence North 03° 03' 23" West 756.40 feet to an iron stake; running thence North 18° 05' 29" West 333.63 feet to an iron stake set in the southeastern corner of Lot 7-R as shown in plat recorded in Plat Book 61, at Page 194 of the Orange County Registry, the southwest corner of Lot 6-R as shown on said plat; running thence with the southern and eastern line of 6-R the following courses and distances: South 65° 24' 54" East 695.76 feet; South 53° 45' 16" East 304.39 feet; North 18° 50' 14" East 417.91 feet to an iron stake in the center of the right-of-way to Wood Duck Lane; thence with the center of the right-of-way to Wood Duck Lane the following courses and distances: along the arc of the circle to the left having an arc of 395.45 feet, a radius of 400 feet, a chord of South 60° 14' 28" East and a distance of 379.54 feet and South 88° 32' 09" East 80 feet to a point in the center of the right-of-way to Meadowview Road; running thence with the center of the right-of-way to Meadowview Road the following courses and distances: South 01° 27' 51" West 69.93 feet; along the arc of the circle to the left having a arc of 274.76 feet, a radius of 1305.28 feet, a chord of South 04° 33' 58" East and a distance of 274.25 feet; South 10° 35' 47" East 326.84 feet; South 10° 35' 47" East 128.09 feet; along the arc of a circle to the right having a arc of 259.13 feet, a radius of 438.95 feet, a chord of South 06° 18' 56" West, a distance of 255.38 feet; South 23° 13' 39" West 331.02 feet; along the arc of the circle to the left having an arc of 199.63 feet, a radius of 1342.87 feet, a chord of South 27° 29' 10" West and a distance of 199.45 feet; South 31° 44' 42" West 47.16 feet to an iron stake set on the northern margin of the margin of the right-of-way to Dairyland Road; running thence along the arc of the circle to the left having a arc of 60.59 feet, a radius of 125.00 feet, a chord of South 17° 51' 35" West and a distance of 59.99 feet to the center of the right-of-way to Dairyland Road the place and point of beginning and being described as the "HOMEPLACE TRACT", containing 52.960 acres, all according to plat of survey entitled "PROPERTY OF ROBERT P. NUTTER", dated February 8, 1994 by Holland Land Surveying.

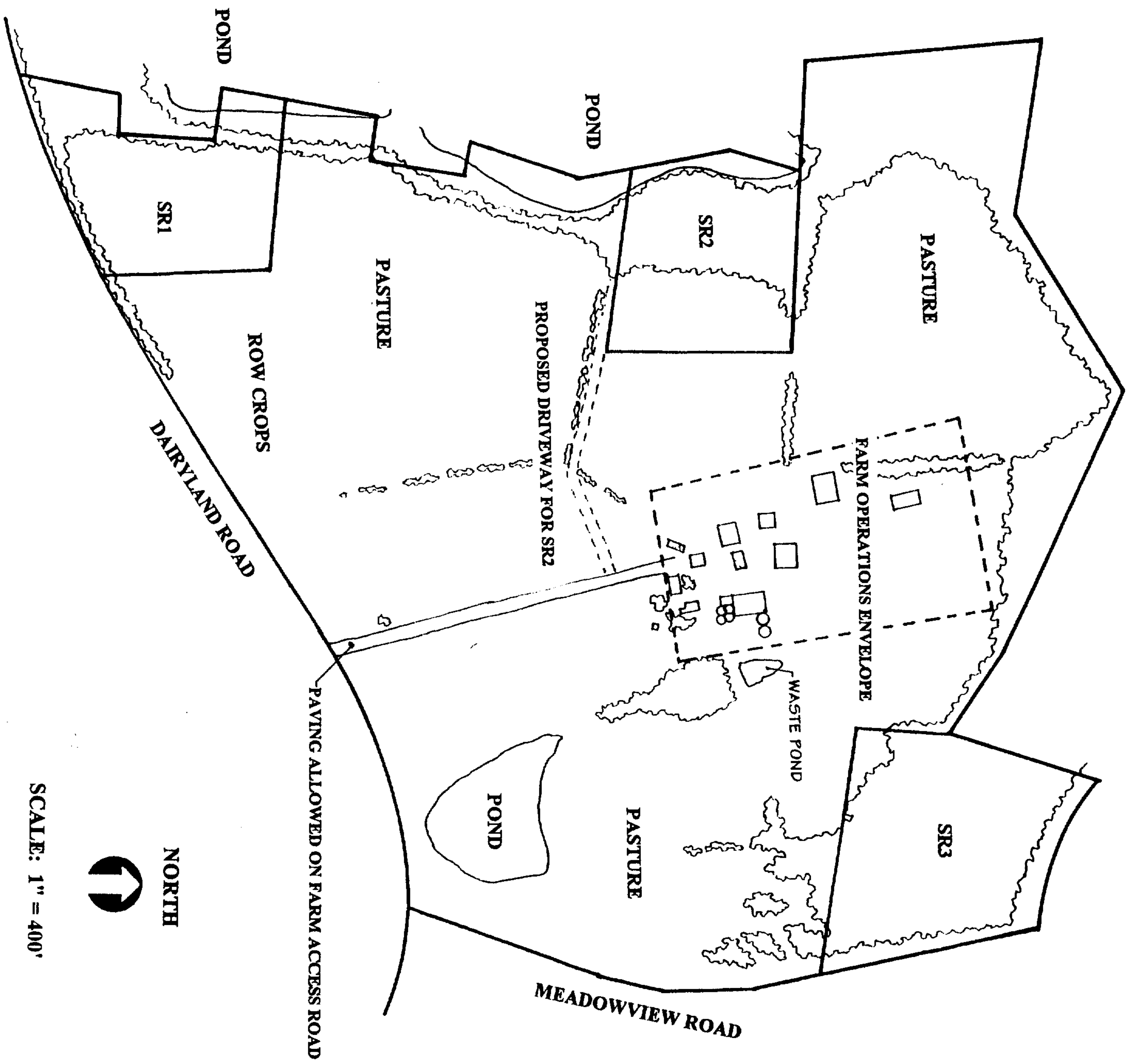
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## TRACT II:

BEGINNING at an iron stake set in the center of the right-of-way to Dairyland Road, the southwest corner of Tract I above; running thence with the western line of Tract I above the following courses and distances: North 07° 36' 00" West 819.20 feet; North 00° 42' 51" West 388.91 feet; North 03° 03' 23" West 756.40 feet and North 18° 05' 29" West 333.63 feet to an iron stake set in the southwest corner of Lot 7-R as shown on plat recorded in Plat Book 61, at Page 194 of the Orange County Registry; running thence with the southern line of Lot 7-R South 61° 14' 21" West 562.53 feet to an iron stake; thence continuing with the southern line of Lot 7-R North 81° 58' 02" West 204.26 feet to an iron stake; running thence North 76° 52' 50" West 270.54 feet to an iron stake; running thence South 05° 29' 03" East 626.31 feet to an iron stake set in the northeast corner of Lot 3 as shown on plat recorded in Plat Book 61, at Page 194 of the Orange County Registry; running thence South 88° 02' 21" East 213.88 feet to a point in the center of a pond; running thence South 09° 30' 56" West 262.59 feet to a point in the center of a pond; running thence South 09° 37' 03" East 344.44 feet to a point in the center of a pond; running thence South 25° 14' 18" West 294.78 feet to a point in the center of a pond; running thence South 74° 38' 29" East 132.58 feet to an iron stake; running thence South 15° 21' 31" West 200.00 feet to an iron stake; running thence North 74° 38' 29" West 132.58 feet to a point in the center of a pond; running thence South 05° 28' 43" West 457.86 feet to a point in the center of a pond; running thence South 82° 01' 11" East 124.37 feet to an iron stake; running thence South 07° 58' 49" East 200.00 feet to an iron stake; running thence North 82° 01' 11" West 124.37 feet to an iron stake; running thence South 10° 28' 54" West 346.34 feet to an iron stake set in the center of the right-of-way to Dairyland Road; running thence with the center of the right-of-way to Dairyland Road the following courses and distances: along the arc of a circle to the left having an arc of 97.73 feet, a radius of 3,840.42 feet, a chord of North 71° 22' 43" East 97.72 feet; North 72° 06' 27" East 245.35 feet; along the arc of a circle to the left having an arc of 298.52 feet, a radius of 1,429.59 feet, a chord of North 66° 07' 32" East 297.98 feet and North 60° 08' 36" East 730.00 feet to the place and point of beginning and containing 54.106 acres, all according to plat of survey entitled "FINAL PLAT-PROPERTY OF NUTTER FAMILY LIMITED PARTNERSHIP", dated September 5, 1995 by Holland Land Surveying.

re\nut.23

B



SCALE: 1" = 400'



NORTH