

MEMORANDUM OF AGREEMENT

BETWEEN

**THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,
SIERRA CLUB, and NORTH CAROLINA COASTAL LAND TRUST**

THIS AGREEMENT (“MOA”) is made and entered into this the 13th day of April, _____, 2018, between SIERRA CLUB, the NORTH CAROLINA DEPARTMENT OF TRANSPORTATION, an agency of the State of North Carolina (“NCDOT”), and NORTH CAROLINA COASTAL LAND TRUST (“CLT”).

WITNESSETH

WHEREAS, on or about April 13, 2018, NCDOT, NCDOT Secretary of Transportation James H. Trogon III, and the Sierra Club (collectively, the “Parties”) entered into a settlement agreement whereby the Sierra Club will dismiss with prejudice all claims filed in the United States District Court case *Sierra Club v. North Carolina Department of Transportation, James H. Trogon III, Secretary, North Carolina Department of Transportation, Federal Highway Administration, John F. Sullivan, Division Administrator, Federal Highway Administration, [other parties]* Civil No. 4:16-CV-00300-F (“Settlement Agreement”). A copy of the Settlement Agreement is attached hereto as Exhibit 1.

WHEREAS, pursuant to the Settlement Agreement, NCDOT has agreed to pay certain sums of money to CLT, a non-profit conservation organization chosen by the Sierra Club, to be used for the purposes described herein.

NOW, THEREFORE, the parties hereto, each in consideration of the promises and undertakings of the other as herein provided, do hereby covenant and agree, each with the other, to the following:

1. Purpose. All sums of money paid by NCDOT to CLT, pursuant to the Settlement Agreement, shall be used exclusively for real property or conservation easement acquisition, which shall include, but not be limited to, option money and/or earnest money payments or deposits, due diligence expenses, such as appraisals, surveys, title examination, title insurance policies, closing costs, recording costs, and legal fees, CLT overhead or fees, subject to the limitations in Section 4 and Section 5, respectively, and related stewardship endowment, either incidental to or required to complete, monitor, and steward the real property or conservation easement acquisition.
2. Conservation Restriction. Each real property or conservation easement acquisition shall advance the perpetual preservation, enhancement, conservation, restoration or maintenance of the natural features, and other resources, including, but not limited to, forest lands, vegetation, streams, and associated wetlands (collectively, the “conservation values”) of the designated land or interest to be acquired.
3. Payment of Money by NCDOT to CLT; Establishment of Funds.
 - a. Pursuant to the terms of the Settlement Agreement, NCDOT shall pay 5,300,000 dollars to CLT within thirty (30) days of final execution of the Settlement Agreement to establish the Croatan Protection Fund; and

- b. Pursuant to the terms of the Settlement Agreement, NCDOT shall pay 2,000,000 dollars to CLT within thirty (30) days of final execution of the Settlement Agreement to establish the Revolving Loan Fund.

4. Croatan Protection Fund.

- a. Permitted Uses of Croatan Protection Fund. The Croatan Protection Fund shall be held by CLT as a restricted-use fund to be used solely for the purposes set out in Section 1 and subject to the restriction of Section 2. Gains or earnings on the Croatan Protection Fund, if any, shall be re-invested in the Fund.
- b. Geographic Scope for Acquisition of Real Property Interests. All acquisitions using the Croatan Protection Fund shall be located within or contiguous to the proclamation boundary of the Croatan National Forest. (Map, Exhibit 2).
- c. Time Frame for Use of Croatan Protection Fund. The Croatan Protection Fund may be used immediately for the purposes described herein.
- d. Expenditures for CLT Overhead. No more than one percent of the funds expended on each real property or conservation easement acquisition shall be expended for CLT overhead expenses in negotiating and acquiring the real property interest.

5. Revolving Loan Fund.

- a. Permitted Uses of the Revolving Loan Fund. The Revolving Loan Fund shall be held and utilized by CLT as an internal loan fund; that is, for interim or bridge financing for real property or conservation easement

acquisitions, solely for the purposes set out in Section 1 and subject to the restriction of Section 2.

b. Geographic Scope for Acquisition of Property Interests with the Revolving Loan Fund. All loans made through the Revolving Loan Fund shall be used for the acquisition of real property or conservation easements located within Carteret, Jones, or Craven Counties with priority being given to real property or conservation easement acquisition projects:

- i. Within or contiguous with the Croatan National Forest proclamation boundary;
- ii. That protect, preserve, or enhance red-cockaded woodpecker habitat; or
- iii. That include mature longleaf pine forests.

c. Management of the Revolving Loan Fund.

- i. The terms of project loans, including the project for which it is to be advanced, the loan amount, interest rate, the loan term (length) and repayment schedule of the loan, and the source(s), timing, and amount(s) of grants expected to be used to repay the loan, shall be subject to approval by the CLT Board of Directors and documented in a corporate project loan resolution (“Project Loan Resolution”).
- ii. Interest will be charged, on a project by project basis, and shall not be less than one (1) percent, except as provided in Subsection (5)(c)(iii), nor exceed the Prime Rate.

- iii. The parties acknowledge that in some circumstances, payment of interest would result in total expenditures by CLT that exceed fair market value of the property or conservation easement being acquired. The loan terms may include a provision limiting interest payments in such circumstances to the extent necessary to prevent total expenditures by CLT from exceeding fair market value. The parties further acknowledge that some or all of the grants obtained to satisfy and repay a loan may not include interest charged or other finance costs as permitted grant expenditures. In such circumstances, the loan terms may include a provision waiving the interest charged that is allocable to the amount of principal satisfied by such grant(s).
- iv. Repayments of loan principal and payments of any interest charged shall be re-invested in the Revolving Loan Fund; provided, however, that CLT's costs and fees not to exceed one (1) percent may be assessed to the Fund.
- v. The assets of the Revolving Loan Fund, when not loaned out to a project, shall be invested with the dual goals of preserving principal and maintaining liquidity; for example, funds may be invested in one or more savings account(s), money market account(s), or certificates of deposit. Gains or earnings on investment shall be re-invested in the Revolving Loan Fund.

- vi. The parties acknowledge and agree that, from time to time, none, all, or part of the Revolving Loan Fund may be loaned out for the purpose described in this MOA.
- vii. The parties acknowledge and agree that repayment of loans made from the Revolving Loan Fund carry an inherent degree of risk, and that CLT shall have no duty to repay any loan or replenish the Revolving Loan Fund from grants or funds other than those identified in the Project Loan Resolution. In the event that CLT is unable to repay any loan in full from some or all of the grants identified in the Project Loan Resolution by its due date, after its good faith efforts, the CLT Board of Directors may take the following actions, sequentially, and for each action taken, the Board shall briefly describe the efforts taken by CLT to repay the loan and the basis for each action.
 1. Extend the loan term by up to twelve (12) months;
 2. Extend the loan term by an additional six (6) months and reduce principal balance by fifty (50) percent. Reduced principal will be treated as though it were a grant paid from the Croatan Protection Fund; and
 3. Extend the loan term by an additional six (6) months. If sufficient funding is not obtained by CLT during that time period, the remaining balance of principal and interest on

the loan will be treated as a grant paid from the Croatan Protection Fund.

6. Conservation Easement on DOT Parcel. NCDOT commits to place a conservation easement on Craven County PIN #6-216-001, an approximately 226-acre parcel of land currently owned by NCDOT, excluding the width of the NCDOT Right-of-Way that is proposed to pass through the parcel. The conservation easement will protect the conservation values of said parcel in perpetuity, consistent with the terms of Exhibit 1, Attachment B. The conservation easement on said parcel is intended to be held by the CLT, subject, however, to prior approval of the CLT Board of Directors and CLT staff approval of the specific terms, restrictions and reservations of the conservation easement, which terms may vary from the terms set forth in Exhibit 1, Attachment B. The purpose of Exhibit 1, Attachment B is to describe the property to be subject to the conservation easement. Exhibit 1, Attachment B is not intended to set out all conditions precedent for CLT to accept the conservation easement on the property described herein below or to incorporate all of the restrictions and provisions that may be required by CLT to hold the conservation easement interest in said property. In the event the CLT Board of Directors does not approve the contemplated conservation easement, NCDOT will pursue other methods to provide permanent protection to the property.
7. Stewardship Endowment for Permitted Real Property Interest Acquisitions. Costs associated with the stewardship endowment for acquisitions of land or

conservation easements shall be consistent with CLT's then-current Policy on Funding Easement and Land Stewardship and Legal Defense.

8. Perpetuity Requirement and Binding Effect. All real property and/or conservation easement acquisitions purchased or held by CLT pursuant to this MOA shall be made and held in perpetuity to preserve and protect the conservation values of the property interest acquired. In the event that CLT transfers or conveys such real property or conservation easement, this requirement may continue to be met provided that (1) CLT includes one or more restrictions in the deed or assignment of conservation easement which restricts the property to protect the conservation values thereof, or (2) the transfer or assignment of the real property interest is made to the State of North Carolina, USFWS, National Park Service or U. S. Forest Service. In the event of any transfer or assignment of the real property interest by CLT, CLT shall be released from further stewardship and enforcement obligations with respect to the real property interest transferred. Any deed, conservation easement, or conveyance document permanently preserving stated conservation values of the property shall run with the land and be enforceable against any subsequent agents, heirs, assigns, grantees, and/or all other successors as their respective interests may appear.
9. Transfer. CLT agrees to notify NCDOT in writing of any transfer or assignment of ownership in any property interest acquired with funds paid by NCDOT pursuant to this MOA.
10. Accounting. CLT agrees to provide an annual accounting to NCDOT and the Sierra Club of all funds received from NCDOT pursuant to this MOA and the use

of said funds. All records of CLT regarding the funds paid by NCDOT are subject to NCDOT review and audit. CLT further agrees to provide NCDOT a copy of all recorded deeds, conservation easements, or other conveyance documents regarding any real property interest acquisition completed pursuant to this MOA.

11. Notices and Consent. Unless otherwise provided herein, all notices or other communications which may be or are required to be given or made by any party to the other under this MOA shall be in writing and shall be deemed to have been properly given and received on the date deposited in the United States mail, registered or certified, return receipt requested, addressed to the parties as set out below or to such other address(es) as either party may establish by written notice to the other delivered in accordance herewith:

Sierra Club

Geoffrey R. Gisler
Kym Hunter
Southern Environmental Law Center
601 West Rosemary Street, Suite 220
Chapel Hill, N.C. 27516

Cassie Gavin
State Director, North Carolina Chapter
Sierra Club
19 West Hargett Street, Suite 210
Raleigh, N.C. 27601

Aaron Isherwood
Coordinating Attorney
Sierra Club
2101 Webster St., Suite 1300
Oakland, CA 94612

NCDOT
North Carolina Department of Justice
Transportation Division

1505 Mail Service Center
Raleigh, N.C. 27699-1505

North Carolina Department of Transportation
General Counsel's Office
1501 Mail Service Center
Raleigh, N.C. 27699-1501

North Carolina Coastal Land Trust

131 Racine Drive, Suite 202
Wilmington, N. C. 28403
Telephone: (910)790-4524
Facsimile: (910)790-0392

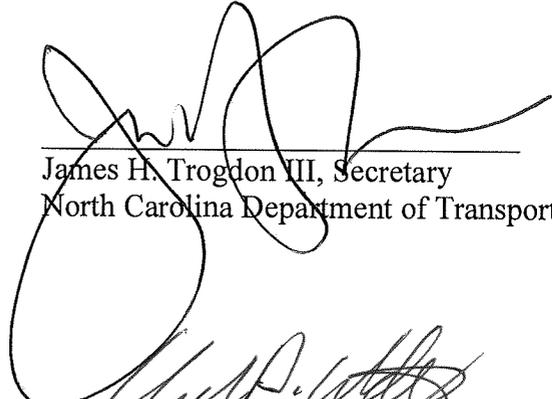
In any case where the terms of this MOA require the consent of any party, such consent shall be requested by written notice. Such consent shall be deemed to have been given unless, within forty-five (45) days after receipt of notice, a written notice of disapproval and the reason therefor has been mailed to the party requesting consent.

11. Amendment. This MOA may be amended by mutual agreement in writing by all parties hereto.
12. Interpretation. It is the intent of the parties hereto that the terms of this MOA not conflict, modify, supersede, or replace the terms of the Settlement Agreement. The terms of this MOA may provide additional terms applicable to the undersigned parties, however, in the event the terms of this MOA conflict with the terms of the Settlement Agreement, the terms of the Settlement Agreement shall govern.
13. Term. This MOA shall not expire and shall survive indefinitely.
14. Governing Law. The interpretation and performance of this MOA shall be governed by the laws of the State of North Carolina.

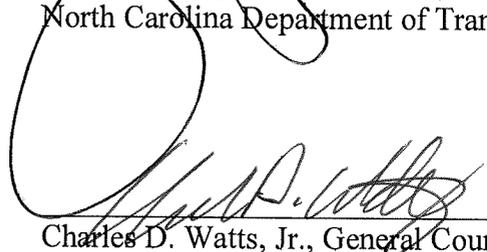
IN WITNESS WHEREOF, this MOA has been executed, the day and year heretofore set out, on the part of the NCDOT, SIERRA CLUB, and the CLT by authority duly given.

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NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

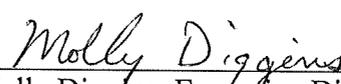
By: 
James H. Trogdon III, Secretary
North Carolina Department of Transportation

Dated: 4/13/18

By: 
Charles D. Watts, Jr., General Counsel
North Carolina Department of Transportation

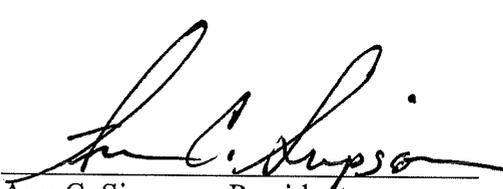
Dated: 4/13/18

SIERRA CLUB

By: 
Molly Diggins, Executive Director
Sierra Club, North Carolina Chapter

Dated: 4/13/18

NORTH CAROLINA COASTAL LAND TRUST

By: 
Ann C. Simpson, President
North Carolina Coastal Land Trust

Dated: 4-8-2018