

REQUEST FOR BOARD ACTION

**HENDERSON COUNTY
BOARD OF COMMISSIONERS**

MEETING DATE: March 1, 2010

SUBJECT: Proposed Easement with Progress Energy for Bent Creek Property

ATTACHMENTS: Yes

- 1) Proposed Easement from Progress Energy
- 2) Proposed Easement Location on Deed Description
- 3) Buncombe County Tax Card

SUMMARY OF REQUEST:

The attached proposed Easement was hand delivered by Progress Energy for construction of a new transmission line across the County's "Bent Creek Property" in Buncombe County. The property is located in the vicinity of the French Broad River and NC 191. The attached copy of the property's deed description highlights the easement location relative to the entire property and the proposed easement contains a more detailed description of the easement. The proposed easement will hand rail the existing Progress Energy easement. The existing easement is 100 feet wide across the property and the proposed easement will add an additional 70 feet of width to the southern side.

Gene Garner with Progress Energy made a verbal offer of compensation for \$8,500 for the easement. The tax value of the 137.22 acreage property per Buncombe County is \$1,111,500, see attached tax card.

BOARD ACTION REQUESTED:

Approve the attached Easement on the County's Bent Creek Property with Progress Energy for \$8,500.

Or

Authorize staff to further negotiate with Progress Energy regarding the proposed easement.

Suggested Motion:

I move that the Board approve the attached Easement on the County's Bent Creek Property with Progress Energy for \$8,500.

Or

I move that the Board authorize staff to further negotiate with Progress Energy regarding the proposed easement.

EASEMENT

NORTH CAROLINA
BUNCOMBE COUNTY

This EASEMENT made this _____ day of _____, 20____, from COUNTY OF HENDERSON, a North Carolina body politic and corporate, hereinafter referred to as GRANTOR (whether one or more), to CAROLINA POWER & LIGHT COMPANY, a North Carolina public service corporation, d/b/a PROGRESS ENERGY CAROLINAS, INC., hereinafter referred to as PEC;

WITNESSETH:

THAT WHEREAS, PEC is the owner of an easement area one hundred (100) feet wide for the construction, operation, and maintenance of an electric transmission line which has been constructed and is in operation across certain land now owned by GRANTOR; and

WHEREAS, the increasing demand for electricity by PEC's customers has made it necessary that said easement area be increased to a width of one hundred seventy (170) feet, extending one hundred twenty (120) feet on the northeastern side and fifty (50) feet on the southwestern side of a survey line which has been surveyed and staked out across the land of GRANTOR.

NOW THEREFORE GRANTOR, for and in consideration of the sum of \$ _____ in hand paid by PEC, the receipt whereof is hereby acknowledged, does hereby grant unto PEC, its affiliates, successors, and assigns, the right, privilege, and easement to go in and upon that certain land situate in Avery's Creek Township, Buncombe County, North Carolina, described as follows: being the land described in a deed from City of Asheville, to County of Henderson, a North Carolina body politic and corporate, dated June 11, 2002, and recorded in Book 2852, Page 775, and further shown in Plat Book 50, Page 107, Buncombe County Registry, LESS AND EXCEPT any prior out-conveyances, and to construct, install, operate, utilize, inspect, rebuild, repair, replace, remove, and maintain overhead and/or underground facilities consisting of electric, communication, or other related facilities within an easement area hereinafter defined, with the right to do all things necessary or convenient thereto, including the following:

- (a) the right of officers, agents, and workmen of PEC and its contractors to go to and from said easement area at all times over the above-described land by such route or routes, including private roads and ways then existing thereon, on foot or by conveyance, with materials, machinery, supplies, and equipment as may be desirable; provided that, except in emergencies, existing roads and ways thereon shall be used to the extent that they afford ingress and egress to and from said easement area; and to construct, reconstruct, work upon, repair, alter, inspect and in general do any other thing necessary or convenient to maintain and operate said facilities for the purpose aforesaid;
- (b) the right to install and maintain guys, anchors, grounding, counterpoise, and appurtenant devices, together with the right to install at the angle points of its overhead facilities guy wires and guy anchors outside of said easement area for the support of the structures of said overhead facilities;
- (c) the right to clear, and keep cleared, from said easement area all structures (other than fences that existed prior to this EASEMENT with the understanding that such fences may be opened and reclosed or temporarily removed and replaced, or PEC may provide suitable gates therein so that PEC shall have unimpeded access along said easement area) and all trees, undergrowth, stumps, and roots, and to use: (1) lawful chemicals, (2) machinery, and (3) other forms of equipment and devices in so doing;

- (d) the right to cut down at any time and from time to time, in PEC's discretion, any tree standing outside said easement area the length of which tree plus five (5) feet equals or exceeds the distance from the base of such tree (also known as a "danger tree") to the nearest overhead facility or to a point on the ground directly underneath the nearest overhead facility, and to cut and remove any limb or any part thereof from any tree standing outside said easement area when such limb or any part thereof protrudes or is likely to protrude into said easement area; and
- (e) the right to construct, install, operate, utilize, inspect, rebuild, remove, and maintain structures, wires, cables, lines, conduits, markers, and other appurtenant devices in conjunction with said facilities with the right to intermingle and interchange the one with the other, and to alter, substitute for, and add other devices from time to time as PEC may deem advisable.

The aforesaid easement area herein granted (including said existing easement area of

Progress Energy Carolinas, Inc.) is more particularly described as follows:

BEGINNING at a point in a western property line of GRANTOR in the eastern property line of, now or formerly, Biltmore Farms, LLC, said point being labeled as W1, on said drawing, and being further described as Sta. 210+79.40 with NC Grid Coordinates N= 658,675.79 E= 930,818.27, and runs thence along and with said common property line N 09° 29' 12" W 182.16 feet to a point in the northeastern edge of the easement acquired herein; thence with the easement edge S 50° 41' 39" E 56.88 feet to a point in an eastern property line of GRANTOR on the western bank of the French Broad River; thence along and with an eastern property line of GRANTOR and the western bank of the French Broad River the following six (6) courses and distances: (1) S 10° 53' 08" E 49.46 feet to a point; (2) S 18° 25' 44" E 39.91 feet to a point; (3) S 17° 28' 18" E 43.68 feet to a point; (4) S 18° 02' 07" E 79.85 feet to a point labeled as V1, on said drawing, and being further described as Sta. 209+84.05 with NC Grid Coordinates N= 658,615.41 E= 930,892.03; (5) S 18° 38' 59" E 8.99 feet to a point; (6) S 11° 16' 22" E 73.36 feet to a point in the southwestern edge of the easement acquired herein; thence with the easement edge N 50° 41' 39" W 99.63 feet to a point in a western property line of GRANTOR in the eastern property line of, now or formerly, Biltmore Farms, LLC; thence along and with said common property line the following two (2) courses and distances: (1) N 10° 14' 00" W 63.98 feet to a point; (2) N 09° 29' 12" W 12.87 feet to the POINT OF BEGINNING, encompassing 0.31 acre, more or less, as shown on the attached plat for greater detail and more complete description, being described as Dwg. No. RW-A-10325, Sheet No. 33, dated September, 2009, last modified February 4, 2010.

It is understood and agreed by GRANTOR that: (1) in the initial clearing of said easement area, any tree cut within said easement area and any danger tree, as defined in paragraph (d) above, cut outside said easement area shall belong to and may be removed by PEC, provided that if any tree is not removed by PEC within a reasonable period of time after being cut, then such tree shall belong to GRANTOR; (2) after the initial clearing of said easement area, any tree cut shall belong to GRANTOR; and (3) the above consideration includes payment for cutting and trimming all trees and no future compensation shall be paid by PEC for any trees cut or trimmed as defined in this EASEMENT.

GRANTOR reserves the right to use the land over which said easement area and easement rights are hereby granted for all purposes not inconsistent with said easement rights, National Electrical Safety Code, PEC specifications, or any federal, state, or local law, rule, or regulation, provided that GRANTOR and PEC agree that: (1) notwithstanding anything to the contrary herein, GRANTOR shall give written notification to PEC and GRANTOR shall obtain written approval from PEC prior to any activity as defined in items (2)-(6) of this paragraph; (2) the clearance between any overhead facilities and the surface of the ground shall not be reduced by grading or any other work and any slopes within said easement area shall be no greater than a one to four (1:4) ratio; (3) if streets, roads, or water or sewer lines are constructed across said easement area, they shall be located at an angle of more than forty-five (45) degrees between the center line of said streets, roads, or water or sewer lines and the center line of said easement area, and shall be located more than thirty (30) feet from any structure or anchor installed by PEC, and outside limit of any cut or fill shall be

more than thirty (30) feet from said structures or anchors; (4) future fences shall not exceed eight (8) feet in height and have minimum twelve (12) foot wide gate(s) installed by GRANTOR so that PEC can have unimpeded access along said easement area; (5) if, under limited circumstances and pursuant to PEC conditions and/or specifications, GRANTOR desires to install future improvements such as temporary or movable buildings or sheds, trailers, billboards, signs, street or area lights, hunting stands, recreational facilities, parking, landscaping, dumpsters, garbage, trash, uprooted stumps, boulders, rubble, flammable materials, building materials, junk or inoperable vehicles, satellite signal receiver systems, erosion control, ponds, or storage facilities within said easement area, then the requested improvements shall not adversely affect, in PEC's sole discretion, the access to, safety, construction, reconstruction, operation, or maintenance of PEC's facilities and PEC shall not be liable for damages to said future improvements installed within said easement area; (6) GRANTOR shall not do anything to: (a) interfere with PEC's access or maintenance to its facilities, or (b) endanger the safety of GRANTOR, PEC, or the general public; (7) under no circumstances shall permanent or immovable buildings, mobile homes, wells, septic tanks and/or related drainfields, swimming pools, absorption pits, air strips, underground vaults, burial grounds, or burning be allowed upon or within said easement area; (8) PEC reserves the right to construct future facilities within said easement area and GRANTOR shall not interfere with or object to the construction of said future facilities; and (9) all facilities installed by PEC shall be and remain the property of PEC and may be removed by it at any time and from time to time.

PEC agrees that it shall be responsible for actual damages to improvements that existed prior to this EASEMENT and annual crops of GRANTOR both inside and outside said easement area on the above-referenced land caused by the construction, installation, operation, utilization, inspection, rebuilding, removal, and maintenance of said facilities, and in going to and from said easement area, and shall be responsible for the breakage caused to any bridge and any extraordinary damage to any road due to heavy hauling to and from said easement area, if claim is made within sixty (60) days after such damages are sustained.

TO HAVE AND TO HOLD said rights, privilege, and easement unto PEC, its affiliates, successors, and assigns, forever.

GRANTOR does hereby covenant with PEC that GRANTOR is lawfully seized of the above-referenced land in fee and has the right to convey said easement area and easement rights; that the same is free and clear from all encumbrances, except for any encumbrances of record or those readily disclosed by a current survey, including but not limited to road, railroad, utility, rights of way, and easements; and that GRANTOR shall warrant and forever defend the title to said easement area and easement rights against the lawful claims of all persons whomsoever.

IN WITNESS WHEREOF, this EASEMENT has been executed under seal by GRANTOR, as of the date first above written.

WITNESS:

_____(SEAL)

_____(SEAL)

_____(SEAL)

_____(SEAL)

NORTH CAROLINA,
_____ COUNTY

I, _____, a Notary Public of _____ County, North Carolina, do hereby certify that _____ personally appeared before me this day and acknowledged the due execution of the foregoing EASEMENT.

Witness my hand and notarial seal, this _____ day of _____, 20_____.

Notary Public

(Notary Seal) My commission expires: _____

NORTH CAROLINA,
_____ COUNTY

I, _____, a Notary Public of _____ County, North Carolina, certify that _____ personally appeared before me this day, and being duly sworn, stated that, in his (her) presence _____ acknowledged the due execution of the foregoing EASEMENT.

Witness my hand and notarial seal, this _____ day of _____, 20_____.

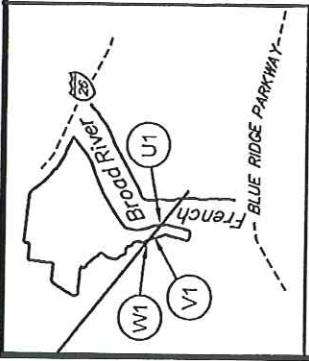
Notary Public

(Notary Seal) My commission expires: _____

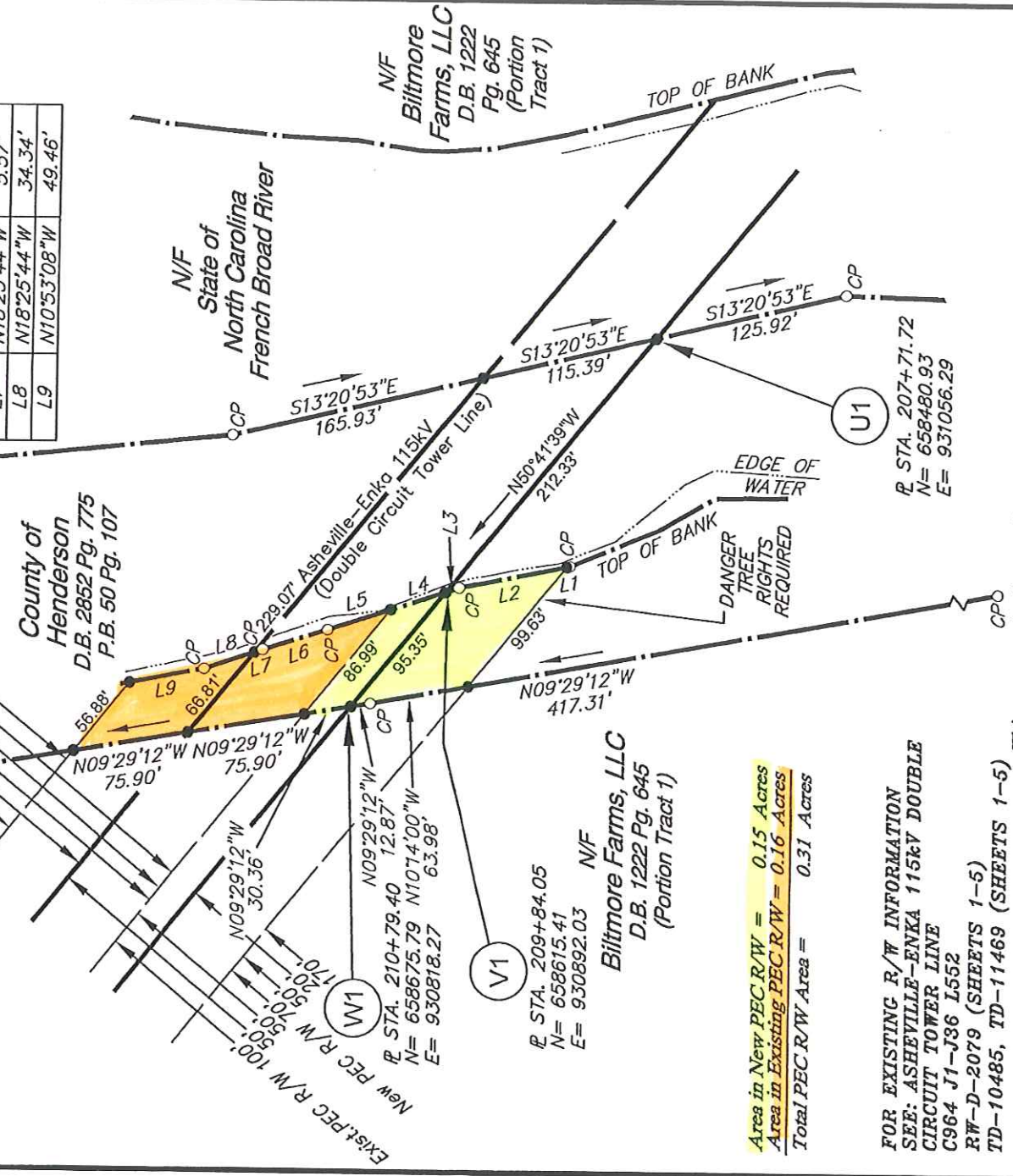
154422

Parcel No(s). 034

LINE	BEARING	DISTANCE
L1	N1176'22"W	2.12'
L2	N1176'22"W	71.24'
L3	N18'38'59"W	8.99'
L4	N18'02'07"W	37.05'
L5	N18'02'07"W	42.80'
L6	N17'28'18"W	43.68'
L7	N18'25'44"W	5.57'
L8	N18'25'44"W	34.34'
L9	N10'53'08"W	49.46'



Locality Map
(Not To Scale)



Area in New PEC R/W = 0.15 Acres
 Area in Existing PEC R/W = 0.16 Acres
 Total PEC R/W Area = 0.31 Acres

FOR EXISTING R/W INFORMATION
 SEE: ASHEVILLE-ENKA 115kV DOUBLE
 CIRCUIT TOWER LINE
 C964 J1-J36 L552
 RW-D-2079 (SHEETS 1-5)
 TD-10485, TD-11469 (SHEETS 1-5)

This map meets the attachment rules as specified in NCGS 47-30, Paragraph M.

This map meets the attachment rules as specified in NCGS 47-30.
 The coordinate shown is North Carolina state plane grid coordinate (NAD83) from NCGS monument "SFKNOLL" with given NAD 83 state plane coordinates of Northing 654126.89 feet and Easting 924678.20 feet. The station numbers and distances shown are horizontal ground distances, to convert the horizontal ground distances to grid distances multiply by the average combined factor of 0.999784425.
 I, Randall L. Stepp, Professional Land Surveyor, certify that this Right of Way Survey was drawn under my supervision by deed description recorded in Book 2852, Page 775; that the ratio of precision was calculated by latitude and departure and is 1:10,000+. Witness my hand and seal this 4th day of February, 2010.



Randall L. Stepp
 2-4-10
 Surveyor's Seal

Randall L. Stepp
 Professional Land Surveyor
 L-4709
 Vaughn & Melton Consulting Engineers
 1318-F Patton Ave. Asheville, NC 28806
 PH - (828) 253-2796 Fax - (828) 253-4864 Firm Lic. #F-1088

- LEGEND**
- EIP Existing Iron Pipe
 - ECM Existing Concrete Monument
 - Calculated R/W Intersection
 - Property Line (P) (Unsurveyed)
 - Edge of Right of Way (R/W)
 - Edge of Existing Right of Way (R/W)
 - Survey Line (S) w/ Point of Intersection (PI)
 - Center Line (C) of Existing Line
 - Other Right of Way Boundaries
 - ▨ Right of Way to be Abandoned

Last Modified: 2/4/2010 1:55 pm
 PROGRESS ENERGY CAROLINAS, INC.
 Right Of Way Map For The
 Asheville Plant - Enka 115kV West Line
 Across Property of
 County of Henderson
 Scale: 1"=100'
 Location: Buncombe Co., N.C.
 Date: Sept. 2009 Dwg. No.: RW-A-10325
 E-File: RW-A-10325-34 Sht. No.: 33

State of North Carolina
County of Brunswick

EMERGENCY Review Officer of Brunswick County, certify that the map or plat to which this certificate is affixed meets all statutory requirements for recording.

E. Maura Murchick
Review Officer
DATE: 5/20/20

Approved by the City Council of the City of Ashwell, North Carolina by Ordinance Number 165-1 Adopted on the 14th day of January, 1925. And affixed the Seal of said City, 1925. And recorded in the Register of Deeds of Brunswick County, North Carolina pursuant to the requirements of N.C. General Statutes Section 1604-25.
Frederick R. Ransom
City Clerk



REF: DB 1392, PG 112
PG 25, PG 107
DB 1336, PG 613

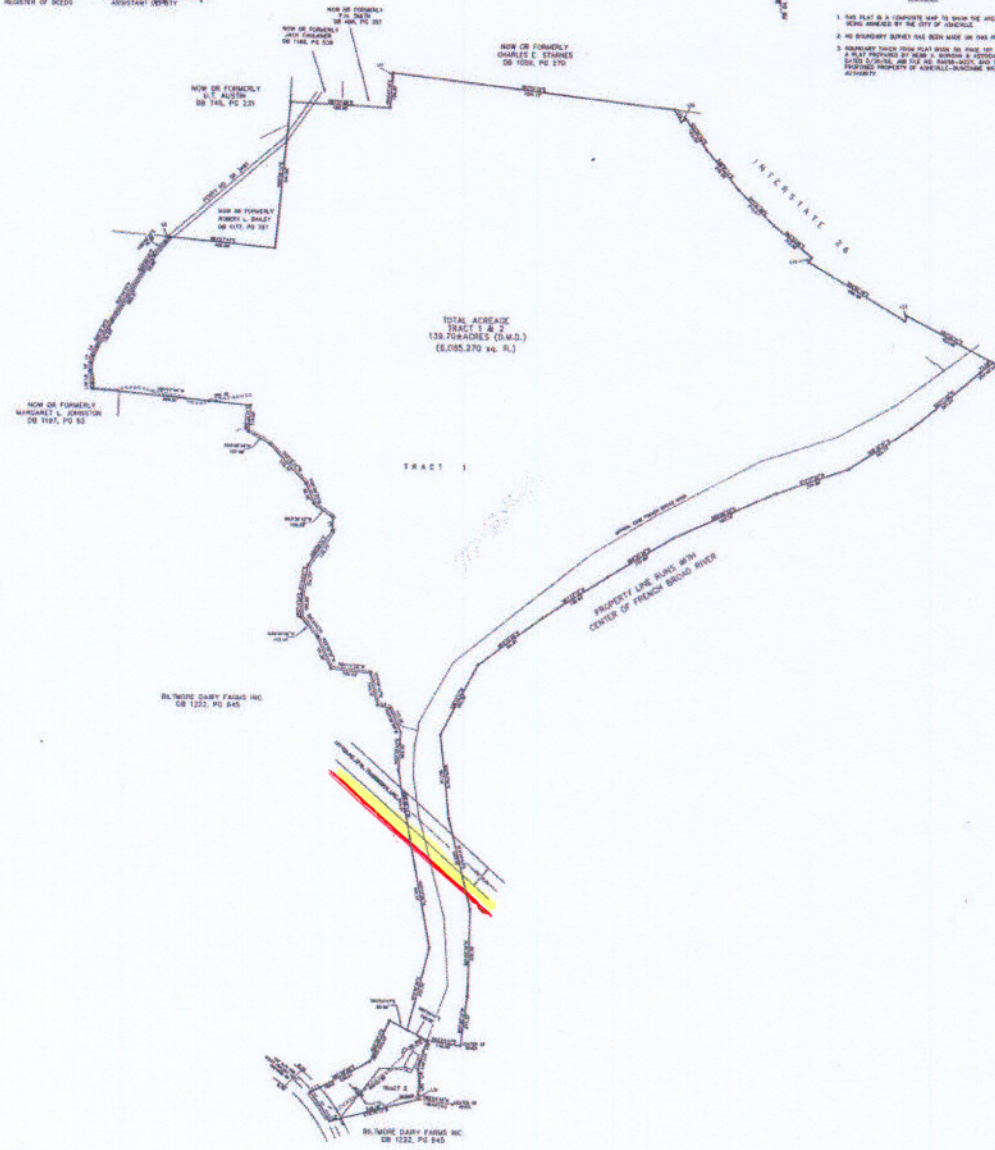
NOTES:

- 1. THE PLAT IS A COMPLETE MAP TO SHOW THE AREA HERE ANNEXED BY THE CITY OF ASHWELL.
- 2. NO BOUNDARY SURVEY HAS BEEN MADE ON THIS PROPERTY.
- 3. BOUNDARY MARKS FROM PLAT WHICH ARE PAINT AND 2 FEET SQUARES OF WOOD IN NUMBER 8 RECORDS, PAINTED STAKES AND ALL OTHER MARKS, AND THEIR PROPOSED REMOVAL BY APPLICANT-ANNEXOR, IS HEREBY APPROVED.

State of North Carolina
County of Brunswick

Filed for registration of **1000** acres of this plat on the 14th day of **May**, 1925, and recorded in PLAT BOOK NO. **165-1**

GIVEN IN WITNESS WHEREOF I, **Richard Rogers Phillips**, REGISTER OF DEEDS, have hereunto set my hand and the seal of said office, this 14th day of May, 1925.



TOTAL ACRES
TRACT 1 & 2
138.26 ACRES (D.W.B.)
(6,098,270 sq. ft.)

NO.	ACRES	SQ. FT.
1	138.26	6,098,270

I HEREBY CERTIFY THAT THIS PLAT IS OF THE FOLLOWING TYPE:
G.S. 47-202. The provisions of this section shall not apply to boundary plats of areas embraced by municipalities nor to plats of municipal boundaries, whether or not required by law to be recorded.
Richard Rogers Phillips
Professional Land Surveyor



ANNEXION OF
BENT CREEK PROPERTY ANNEXATION
BENT CREEK TOWNSHIP
PLAT NO. 165-1-10-2854 &
PLAT NO. 165-1-10-27-6455
BRUNSWICK COUNTY, N.C.
SCALE: 1" = 100'
DATE: 5/20/20
PREPARED BY: **Richard Rogers Phillips**
REGISTERED PROFESSIONAL LAND SURVEYOR
PHONE: (919) 355-1000 FAX: (919) 355-1000



PLAT BOOK 165-1 PAGE 271



County of Buncombe, North Carolina

Web Property Record Card
9636-10-3860-00000

Date Printed: 2/19/2010

Owner Information		Parcel Information		Total Property Value: 0
Owners:	COUNTY OF HENDERSON	Status:	Active	
Address:	100 N KING ST HENDERSONVILLE NC 28792	Account:	8170045	
Property Location:	BREVARD RD	Deed Date:	7/15/2002	
		Deed Book/Page:	2852 / 0775	
		Plat Book/Page:	0001 / 0271	
		Legal Reference:	EXECUTORS/ADMINISTRATORS DEED	
		Location:	BREVARD RD	
		Class:	GOVERNMENT OWNED	
		Neighborhood:	BILTMORE ESTATE AREA	
		Subdivision:	BENT CRK PROPERTY ANNEXATION	
		Sub Lot:	TR 1	
		Zoning:	IND	
		Conservation/Easement:	N	
		Flood:	Y	

Ownership History

Transfer Date	Price	Legal Reference	Deed Book/ Page	Qualified	Vacant When Sold	Account	Seller Names
07/15/02	\$0	EXECUTORS/ ADMINISTRATORS DEED	2852 / 0775	No: K	Yes	8128875	CITY OF ASHEVILLE
06/14/02	\$0	QUITCLAIM DEED	2826 / 0808	No: C	No	8138659	
08/17/99	\$0	WARRANTY OR SPL/COMP TRANSFER	2152 / 0004	No: C	No	6948563	CITY OF ASHEVILLE

Assessment History

Year	Account	Acres	Land	Bldgs	Other Impr	Assessed	Desc	Exemptions	Deferred	Taxable
2009	8170045	137.22	1,111,500	0	0	1,111,500	EXEMPT/NON REQUALIFY	1,111,500	0	0
2008	8170045	137.22	1,111,500	0	0	1,111,500	EXEMPT/NON REQUALIFY	1,111,500	0	0
2007	8170045	137.22	1,111,500	0	0	1,111,500	EXEMPT/NON REQUALIFY	1,111,500	0	0
2006	8170045	137.22	1,111,500	0	0	1,111,500	EXEMPT/NON REQUALIFY	1,111,500	0	0
2005	8170045	137.22	631,200	0	0	631,200	EXEMPT/NON REQUALIFY	631,200	0	0
2004	8170045	137.22	631,200	0	0	631,200	EXEMPT/NON REQUALIFY	631,200	0	0
2003	8170045	137.22	631,200	0	0	631,200	EXEMPT/NON REQUALIFY	631,200	0	0
2002	8138659	137.22	631,200	0	0	631,200	EXEMPT/NON REQUALIFY	631,200	0	0
2001	8138659	137.22	561,800	0	0	561,800	EXEMPT/NON REQUALIFY	561,800	0	0

Land Data Total Acres: 137.22		Land Value: 1,111,500		Other Improvements Value: 0	
Acres					
Segment#	Units	Description			
1	137.22 Acres	LOT			

Total Building Value: 0