



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403-1343

RECEIVED
Division of Highways

NOV 23 2009

Preconstruction
Project Development and
Environmental Analysis Branch

November 17, 2009

Regulatory Division

ORM ID 199300570, TIP R-210, US-1 Relocation

Mr. J. J. Barnes, Jr
115 Drake Street
Post Office Box 1741
Fayetteville, North Carolina 28302

Dear Mr. Barnes:

We were recently made aware by North Carolina Department of Transportation (NCDOT) staff that activities undertaken on the tract owned by the LR Hunt Club, a 327-acre tract adjacent to the Little River, near Lobelia, Moore County, North Carolina, are in violation of the Clean Water Act, in violation of the Conservation Easement (1998 Easement) that was granted to the NCDOT by the Sandhills Area Land Trust (SALT) on July 13, 1998, and in violation of Department of the Army Permit 199300570, issued to the NC Department of Transportation for construction of the US 1 Relocation project, R-210. Specifically, the placement of fill material into waters of the United States without a permit, which has occurred on and adjacent to the existing degraded logging road on the property, is a violation of Section 301 of the Clean Water Act, and must be remedied.

Our recent site inspection has revealed that approximately 0.5 miles of the existing logging road has been improved with a mixture of clay and gravel. Although it is difficult to tell the extent of road-grade modification, there is no doubt that these actions have improved the road to the extent that vehicular traffic can easily access the entire Property. In addition these actions, coupled with the installation of several new cross pipes 6- to 12-inches in diameter, have facilitated the removal of water from the site. Finally, it was apparent that mowing and cutting of vegetation was occurring on various portions of the property, including the removal of a 6"DBH cypress tree on the existing trail to the Little River. As much as 150 loads of material may have been brought on to the Property, some of which have been discharged into wetlands, in violation of the Clean Water Act.

It appears that several conditions of the 1998 Easement have been violated. Specifically, I note that the following conditions appear to have been violated:

Condition 3 (c) prohibits "any alteration of the surface of the land including, without limitation, the excavation or removal of soil..." The activities conducted on the road, including the installation of new pipes, violate this condition.

Condition 3 (e) prohibits the “draining, filling, dredging, or diking of the wetland areas...” The installation of pipes under the road has contributed to the draining of wetlands in the mitigation area.

Condition 3 (g) prohibits “the pruning, cutting down, or other destruction of live trees except as necessary...to prevent [substantial] hazard disease, or fire...” Vegetation has been cut in violation of this condition.

Condition 4 (d) allows the construction of a trail specifically for horses and a wagon, but only if such trail does not jeopardize the mitigation, and only with the approval of the USACE and the DWQ. If the activity on the Property noted above intended to create such a trail, it fails to meet both requirements; neither agency was contacted to obtain its approval, and the road, as constructed, does indeed jeopardize the mitigation.

Additionally, condition 5(f) of the NCDOT permit specifically states that “no improvements shall be initiated on the logging road that bisects the SALT mitigation site. This includes changing the existing grade, maintenance grading, widening, and/or paving.” The activities that have occurred onsite are a clear violation of this NCDOT permit condition.

The situation on the Property appears to have been worsened by the granting of another Conservation Easement over the property between Guyencourt, LLC, and SALT, executed on September 17, 2003 (the 2003 Easement). Several of the provisions in this new conservation easement appear to either directly or indirectly conflict with the 1998 Easement. Specifically, the conditions relating to canoe access, pedestrian trails, horse trail, and prohibited uses improperly modify the conditions in the underlying 1998 Easement. It is our understanding that, since the 1998 Easement was recorded first, the conditions of the 1998 Easement supersede any conflicting language in the 2003 Easement.

I direct you to undertake no further activities in waters and wetlands on the property, and to coordinate with NCDOT to remedy the violations onsite. In order to resolve these violations, I ask that you take the following actions within 90 days of your receipt of this letter:

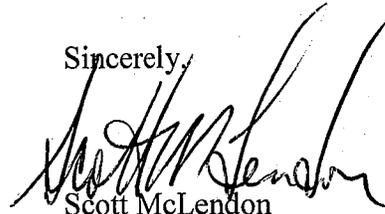
1. Insure that any material that has been placed in wetlands is removed.
2. Insure that any material placed on the road is removed.
3. Insure that all cross pipes under the road are removed.
4. Insure that no further cutting of trees occurs on the property, other than that done in compliance with the 1998 Easement.

5. Inspect the property to determine whether other easement conditions have been violated, and take action to remedy any other violation.

6. Take appropriate legal action to amend or invalidate any portion of the 2003 Easement that is in conflict with the terms of the 1998 Easement.

We appreciate your cooperation in this matter, and will work with you to help bring it to a satisfactory resolution. Questions or comments regarding this correspondence may be directed to the undersigned at (910) 251-4952.

Sincerely,



Scott McLendon
Assistant Chief
Regulatory Division

Copies furnished:

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