

## **Sandhills Area Land Trust (SALT) Mitigation Property; Moore County**

### **Description/Issue:**

The SALT Tract, formally Taylor Tract, is located off Lakebay Road (SR 2023) southwest of Lobelia in southern Moore County. The total site is approximately 320 Ac. in size. The site was originally purchased by SALT in 1998 from Mr. Fred Taylor for \$640,000.00. The NC Department of Transportation (NCDOT) simultaneously purchased a Conservation Easement encompassing the entire property from SALT for \$640,000.00 (Attachment A). This site was used as compensatory wetland mitigation to offset unavoidable wetland impacts associated with R-210, US 1 Relocation near Vass. The property is composed of several different ecological components, including upland, restoration, enhancement, and preservation of riverine wetlands, all of which were utilized to fulfill mitigation for R-210, including the upland areas. There are a number of events that have taken place in relation to this property since the original NCDOT involvement in 1997, including mitigation credit debate with environmental resource agencies, a number of land transfers (with additional recorded easement), construction, monitoring, transfer to Ecosystem Enhancement Program (EEP), and finally permit violations by current land owner.

The current issues that surround the property include the permit violations implemented by the current property owner, L.R. Hunt Club, LLC, as well as two conflicting Conservation Easements that are recorded on the same tract of land. NCDOT became aware of improvements to the old logging road that bisects the SALT Mitigation Property in July, 2009 through the EEP, whose contractor was completing the post-construction monitoring activities to fulfill the environmental permit requirements. The road improvements include the placement of earth fill material and/or aggregate, as well as culverts, in low lying areas of the road. The current improvements have created new drainage features, which DOT had previously disrupted as part of the wetland restoration plan. The current actions were undertaken by the current property owner, with no prior knowledge by NCDOT, until the work was completed. Furthermore, there was no prior knowledge by the Corps of Engineers or the Division of Water Quality.

Upon review of the property and legal documents, it was determined that NCDOT holds a Conservation Easement, dated July, 1998 (Attachment B), on this parcel, which specifically prohibits such activity. In addition, a second Conservation Easement has been recorded in September, 2003 between SALT and Guyencourt, LLC, when the land trust sold the property in 2003 (Attachment C). There was no prior notification by SALT to NCDOT of this second Conservation Easement. There are provisions within the second easement that are in direct conflict to the original NCDOT easement.

In conclusion, the environmental permit violations and the two conflicting conservation easements jeopardize NCDOT's usage of the mitigation credits to compensate for unavoidable losses to wetland along the US 1 route. In November, 2009, the Army Corp of Engineers issued Violation letters to NCDOT, SALT, and L.R. Hunt Club LLC.

January 26, 2011

(Attachment D). Since that time, NCDOT has been in constant communication and coordination with SALT, NC Attorney General's Office, L.R. Hunt Club (Mr. J.J. Barnes), USACOE, DWQ, and others to make every effort such that NCDOT regains full mitigation credit from the property and that the Conservation Easements are resolved.

Parties:

JJ Barnes: LR Hunt Club LLC

Dan Bell: ex-Executive Director of SALT; new Executive director: Candace Williams;  
Nancy Talbot-contract administrator

Guyencourt LLC: purchaser from SALT (Boots and Dave Wright (David Marchand  
Wright, wife is Esther Riegel Wright), principals w/ Guyencourt)

Chronology:

- 10/6/97 ltr from Marsh Smith (representing SALT) to DOT re: sales contract for purchase of the Taylor tract: SALT offered purchase price: \$480,000;
- 10/30/97 DOT increased the purchase price of Conservation Easement to \$640,000.00 provided the timbering of the land cease upon signature of the contract for purchase b/w SALT and Mr. Taylor.
- 7/13/98 deed transferring title of the Taylor property to SALT; prepared by Russell J. Hollers (Troy, NC); 320 acres;
- 7/13/98 SALT granted NCDOT a CE on the property with the following key provisions (Note: prepared by Marsh Smith):
- In perpetuity
  - ¶ 2 DOT's rights: monitor grantors' compliance with terms of the CE and enforce the terms
  - ¶ 3 prohibited uses: permanent improvements; altering the surface land; draining, filling, dredging, or diking of the wetlands; alteration of ponds or watercourses on the property
  - ¶ 4 SALT's rights
  - ¶ 5 Notice required to DOT
  - ¶ 7 Grantee's remedies: 1. Written notice to SALT with opportunity to cure; 2. 30 day cure period; if not cured, DOT can initiate legal action ; 3. DOT can ignore the cure period if necessary
  - ¶ 8 DOT can seek cost of enforcement (including attorney's fees) from SALT
  - ¶ 18 this CE can only be extinguished by judicial proceedings or written agreement of both parties
  - ¶ 20 Subsequent transfers by SALT: 1. Incorporate the terms of the CE in any deed or legal instrument divesting themselves of an interest in the property; 2. SALT to provide 20 days prior notice of a transfer of any interest; 3. Failure by SALT to perform any of these

obligations will not impair the CE; 4. Parties may agree to SALT reserving another CE to itself with terms that do not conflict with the 1998 CE

- 2002 Total cost (preliminary engineering, right of way, construction) for the mitigation site: Approx. \$850,000.00
- 10/4/02 Corps 404 permit to DOT for R-201 project issued: violations can result in the revocation of the permit; provisions applicable to this matter are in paragraph 5 of the Special Conditions
- 4/23/03 Ltr from SALT to DOT re: private conservation buyer extended an offer to purchase the property who "fully acknowledges the goals and restrictions of the property's current conservation easement"; Salt will "uphold and implement all the State's conservation easement interests, requirements and mitigation plans."; terms of the CE will be incorporated in the deed; SALT might create a 2<sup>nd</sup> CE
- 5/5/03 DWQ issued NOV to the US 1 project: among other things found violation of permit condition 15 which requires the submission of a report to DWQ describing the final approved wetland and stream mitigation for the project within 2 months of issuance of the 404 permit by the Corps
- 6/6/03 Ltr from DOT to SALT re: DOT does not object to the sale to a conservation buyer; DOT requests the following information: name of buyer, 1998 CE to remain in effect, sale shall not impact DOT's mitigation obligations, and DOT wants a copy of any additional CEs
- 6/9/03 Marsh Smith ltr to SALT re: Boots and Dave Wright to close on the Taylor tract; buyers' names can be released; take ownership under an LLC that is to be formed
- 9/16/03 Deed transferring the property from SALT to Guyencourt, LLC: prepared by J. Hunter Stovall (Stovall & Blevins); subject to the 1998 CE; purchase price: \$137,500; Marsh Smith was the settlement agent (paid \$2,500)
- 9/17/03 Guyencourt granted SALT a CE in the Taylor tract: governs the entire property; perpetual easement; Corps takes issue with Article II; SALT has the right to enforce this CE; SALT to be notified of any transfers of the property; Exhibit B notes that 200 acres of the property is wetlands subject to the CWA
- 12/22/03 Ltr from SALT to DOT re: land sold to a conservation buyer; current easement remains unaffected; **"At this time, the Sandhills Area Land Trust does not contemplate an additional conservation easement."**

- 2/28/07 Site transferred to EEP to complete final 4 years of post-construction monitoring
- 7/31/07 e-mail from Stephanie Horton to SALT re: EEP monitoring staff saw a for sale sign (Realtor: Clark Real Estate, Maureen Clark, 910-695-0898, her office is next door to the SALT office) on the property advertising 5 acres of developable land on the site; 5 acres appears to be with the 1998 CE area
- 7/31/07 e-mail from Richard Perritt with SALT to Stephanie Horton re: property sold to Guyencourt (Dave and Boots Wright) with the 1998 CE; entire property is on the market; SALT supplied Maureen Clark and landowners with the CE documents and the full mitigation plan; property went on the market 4-5 months ago; 5 acre tract is separate from the mitigation tract;
- 4/27/09 ltr from Barnes to SALT: informing SALT, pursuant to Article 4, ¶ A of the SALT CE, that property was transferred from Guyencourt to the hunt club; work with SALT to maintain the property; issues on the property include: **wash-outs and drainage problems with the main access roads through the property; taken steps to remedy the problems and would appreciate inspection of the road improvements;** applied for burning permits since the property is grossly overgrown
- 5/5/09 Deed from Guyencourt to LR Hunt Club LLC: filed on this date; **executed on 4/10/09** (why the delay in recording the deed??); no mention of CEs; David M. Wright (Florida driver's license) signed the deed on behalf of Guyencourt
- 6/22/09 e-mail from Greg Thorpe re: tc from Nancy Talbot (SALT—contract administrator) re: 1. Deed changed hands a couple of times; 2. SALT may still have some responsibility for managing the CE and mitigation credits; 3. Current owner has requested permission to conduct managed burns; 4. Talbot was attempting whether SALT or DOT should respond to the landowner; 5.
- 7/21/09 ltr from EEP to Barnes re: reference a meeting between Barnes and EEP on July 8, 2009; EEP has a key to the lock; SALT notified EEP of the transfer; **“For your future reference SALT no longer maintains any management interest in this property and all correspondence should be directed to the Department of Transportation addressed to Ms. Denise Amato, NCDOT ROW, 1 South Wilmington St., Raleigh, NC 27601”;** “. . . you mentioned a conversation with Tracy Morris regarding the road improvement. Tracy is one of our project managers here at EEP and does work in Moore County, but she does not work for NCDOT.”; **“You will need to write and discuss any**

**requests regarding the conservation easement to the contact at NCDOT.”; sent a copy of the 1998 CE to Barnes; EEP is currently monitoring the site and the next 2-3 years are critical for credit release**

- 9/4/09           ltr from DOT to Barnes: requesting that the hunt club refrain from construction and maintenance activities on the property until DOT hears from the Corps
- 11/17/09        ltr from Corps to Barnes: violations of Clean Water Act, 1998 CE, and the Corps permit. Issues: 1. Placement of fill (150 loads of fill brought onto the property) into waters of US without a permit in violation of Section 301; 2. 0.5 Miles of the logging road have been improved and cross pipes have been installed; 3. Vegetation was removed. 1998 CE violations include: 1. Condition 3(c) altering the land; condition 3(e) prohibits “draining, filling, dredging or diking of the wetland areas . . . .”; condition 3(g) prohibits “pruning, cutting down or other destruction of” vegetation; condition 4(d) permits the construction of trails but only if it does not impact mitigation and only with approval of Corps and DWQ; condition 5(f) prohibits improvements to the logging road. 2003 Easement conflicts with provisions of the 1998 CE. Directed to coordinate with NCDOT and to do the following: 1. Remove material placed in wetlands; 2. Remove material placed on the logging road; 3. Remove cross pipes under the road; 4. Don’t cut anymore trees; 5. Remedy other easement violations; and 6. Invalidate conflict provisions of the 2003 CE.
- 11/17/09        ltr from Corps to SALT re: same as above; concerned that SALT participated in the violations by drafting a CE that conflicted with the '98 CE; “. . . concerned about our ability to accept SALT as an acceptable easement holder on future conservation easements required by the Corps.”; Requested: 1. Explanation of why the 2003 Easement was granted; 2. An inventory of Corps mitigation sites where SALT holds CE, with confirmation that no subsequent easements were recorded; 3. Information on how SALT can correct the current situation on the property; 4. SALT’s policy re: layering CEs in the future
- 11/17/09        ltr from Corps to DOT: same as above; realize activities taken w/o DOT’s consent; violations of 1998 CE and the CWA; to remain in compliance with your permit do the following in 90 days: same as 1-5 in Barnes ltr

***Above information prepared by the NC Attorney General’s Office – O’Toole & NCDOT Griffin***

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- 12/1/09-  
3/5/10           NCDOT staff work to prepare remediation plan acceptable of USACOE and DWQ.

Ag's office negotiates with SALT on payment terms and schedule.

- 1/2/10 Itr SALT to Corps in response to violation
- 1/11/10 Itr AG to SALT requesting meeting regarding violation
- 1/20/10 mtg SALT, Hunt Club, AG, DOT at SALT headquarters Fayetteville to discuss violations (SALT Board member to attend: R. Sheats)
- 1/27/10 e-mail AG to SALT with DOT offer for payment schedule and terms for reimbursement of remediation efforts over time.
- 2/4/10 mtg Corps, SALT, DOT to review remediation plan on-site
- 2/13/10 Itr SALT to AG acknowledging acceptance by SALT's Executive Committee on 2/10/10 agreeing to terms that DOT pay for initial remediation and SALT repays over time.
- 2/16/10 Itr DOT to Corps response to violation with copy of draft remediation plan
- 2/25/10 Itr AG to SALT AG/DOT acceptance of SALT payment terms with exceptions noted in letter
- 3/3/10 Itr from Corps to DOT accepting Final remediation plan (Attachment E)
- 3/5/10 e-mail DOT to EEP; DOT informed EEP of remediation proposal, future monitoring of the SALT tract, MOA, etc.
- 3/15/10 Itr SALT to AG SALT securing a loan through Cape Fear Farm Credit in amount of \$60,000.00, with additional \$10,000.00 coming from operation monies, should be complete within 10 days;
- 3/16/10 AG's office to begin drafting Three Party MOA
- 4/5/10 AG draft MOA for DOT review
- 4/19/10 DOT to Corps e-mail draft MOA and new CE for review by Corps.
- 5/20/10 Corps to DOT e-mails accepting MOA, new CE and attachments.
- 5/24/10 AG sends final MOA to Barnes and SALT for review and comments (June 11 deadline for response from both)
- 6/1/10 SALT to AG e-mails that SALT will not be able to meet the June 11 deadline. Needs to be reviewed by Executive committee and land committee, which will not meet until the end of June

- 6/7/10 Itr from Corps to SALT & Barnes requesting quick resolution from all parties
- 6/7/10 Itr Barnes to AG: Barnes expresses need for outline of large proposal "seems grantor receives less than originally possessed"
- 6/15/10 Itr AG to Barnes: AG cannot provide legal advice since AG represents DOT
- 6/16/10 Itr from The Yarborough Law Firm, P.A. (Neil Yarborough) representing SALT to AG acknowledging MOA, but requesting amendments regarding payment schedule in original MOA "SALT intends to make monthly payments during construction and intends to pay off entire costs by the end of construction"
- 6/21/10 phone Barnes to AG: Barnes to sign MOA AG sends final copy to L.R. Hunt Club LLC for signature
- 7/1/10 Itr AG to Neil Yarborough representing SALT revised MOA with additions from 6/16/10 memo for signature (attachment F)
- 7/17/10 e-mail AG to Neil Yarborough: Barnes has signed MOA; Request timeline from SALT signature
- 7/26/10 e-mail Yarborough to AG: MOA and CE being reviewed by SALT
- 8/11/10 e-mail AG to DOT: no response on SALT signature
- 9/14/10 phone call R. Sheats (SALT Board Member) to DOT: wants DOT to consider land trade for compensation; SALT does not have funding to reimburse DOT
- 9/15/10 Internal DOT correspondence: DOT cannot accept land as reimbursement; DOT relays this information to R. Sheats for SALT Board meeting
- 12/17/10 Itr to AG from William E. Clark PLLC on behalf of SALT issuing opinion "that SALT has no responsibility for any environmental damage done to the Property." Also attached Itr dated 11/17/10 from Southern Environmental Law Center to SALT stating "SALT has no liability for these actions and, in fact, has no remaining interest in the property....." (Attachment G)

***Above information prepared NCDOT-Griffin***

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Other Information:

Through negotiations with Corps, it is anticipated that the remediation expenditure would not exceed \$75,000.00. A WBS element has been established through DOT-Program Development for state forces construction to implement the remediation plan in accordance with the final remediation plan approved by Corps of Engineers.