



---

**File Code:** 2000  
**Date:** November 18, 2022

John F. Sullivan III  
Division Administrator  
Federal Highway Administration  
310 New Bern Avenue, Suite 410  
Raleigh, NC 27601

Dear Mr. Sullivan,

Application has been made for the appropriation and transfer of lands of the United States within the Nantahala National Forest for right-of-way for the construction of Corridor K in the Appalachian Highway Development System, Graham County, NC. The areas applied for include the following parcels from section A-0009CB and section A-0009CC:

- A-0009CB: NC 143 from State Route 1223 Beech Creek Road to 0.5 mile north of the Appalachian Trail (AT)
  - Parcels 106, plan sheet 30-31; USFS Tract N-667
  - Parcel 110, plan sheet 31-32; USFS Tract N-696
  - Parcel 111, plan sheet 32-33; USFS Tract N-608
  - Parcel 113, plan sheet 32-33; USFS Tract N-605
  - Parcel 115, plan sheet 33; USFS Tract N-599
  - Parcel 118, plan sheet 33; USFS Tract N-658
- A-0009CC: NC 143 from 0.5 mile north of the Appalachian Trail to NC 28 and on NC 28 from NC143 to 0.3 mile east of SR1235 Gunter's Gap Road
  - Parcel 122, plan sheet 36-37; USFS Tract N-676
  - Parcel 124, plan sheet 37; USFS Tract N-668

We agree to the appropriation and transfer of these lands under the provision of Sections 107(d) and 317 of the Act of August 27, 1958, 72 Stat. 893 and 916; 23 U.S.C. 107(d) and 317, under the following conditions to be included in the grant of Highway Easement Deed (and upon compliance with the enclosed Stipulations agreed to by the State on November 7, 2022.

1. Outstanding valid claims, if any, existing on the date of this grant, and the NCDOT shall obtain such permission as may be necessary on account of any such claims.
2. The NCDOT and an authorized official of the Forest Service shall make a determination as to the necessity for archeological and paleontological reconnaissance and salvage within the right-of-way, and such reconnaissance and salvage, to the extent determined necessary because of construction of the highway facility, is to be undertaken by the NCDOT in compliance with the acts entitled "An Act for the Preservation of American Antiquities", approved June 8, 1906 (34 Stat 225; 16 U.S.C. 432-433) and the "Archaeological Resource Protection Act of 1979" (93 Stat. 721, 16 U.S.C. 470aa-470mm), and State laws where applicable.



3. Unless the NCDOT and an authorized officer of the Forest Service stipulate a shorter time, the easements herein granted shall terminate ten (10) years from the date of the execution of this deed by the United States of America, in the event that construction of a highway on the right-of-way is not started during such ten-year period.
4. The easements herein granted are limited to uses described, and the space above and below the established grade line of the highway pavement, for the purpose of construction, operation, and maintenance of highway and other easements in accordance with the approved plans described in the following condition number 5, and does not include the grant of any rights for non-highway purposes or facilities; provided that the right of the Forest Service to use or authorize the use of any portion of the right-of-way for non-highway purposes shall not be exercised when such use would be inconsistent with the provisions of Title 23 of the United States Code and of the Federal Highway Administration regulations issued pursuant thereto, or would interfere with the free flow of traffic, or impair the full use and safety of the highway; and in any case, the NCDOT and the FHWA shall be consulted prior to the exercise of such rights, provided further, that nothing herein shall preclude the Forest Service from locating National Forest and other Department of Agriculture information signs on the portions of the right-of-way outside of the construction clearing limits.
5. The design and construction of the highway project situated on the right-of-way will be in accordance with the provisions of Title 23, United States Code – Highways and amendments; the Regulations for the Administration of Federal-aid for Highways, effective May 11, 1960, and amendments and established procedures for Federal-aid projects, including the requirements of Title 23, Code of Federal Regulations, Part 771, and the construction specifications of the NCDOT as approved by the FHWA for use on Federal-aid projects.

An authorized official of the Forest Service will be provided an opportunity to review plans relative to the effects, if any, that the project works as planned will have upon adequate protection and utilization of the land traversed by the right-of-way and adjoining land under the administration of the Forest Service for the purposes for which such land is being administered. Those features of design, construction, and maintenance of the highway facility and the use of the right-of-way that would have an effect on the protection and utilization of the land under the administration of the Forest Service are to be mutually agreed upon by the an authorized official of the Forest Service and the NCDOT by conference or other communication during the preparation of the plans and specifications of each construction project; and the plans shall be revised, modified, or supplemented by written stipulation between the an authorized official of the Forest Service and the NCDOT, prior to the start of construction.

The final design and the construction specifications for any highway construction project on the right-of-way will be presented to an authorized official of the Forest Service for approval; and construction shall not begin until such approval is given;

- provided, that if it is subsequently deemed necessary that the approved plans, specifications, or stipulations be amended or supplemented, any amendment or supplement shall be approved by an authorized official of the Forest Service and the NCDOT before being placed in effect.
6. Consistent with highway safety standards, the NCDOT shall:
    - a. Protect and preserve soil and vegetative cover, and scenic and aesthetic values, on the right-of-way outside of construction limits.
    - b. Provide for the prevention and control of soil erosion within the right-of-way and adjacent lands that might be affected by the construction, operation, or maintenance of the highway, and shall vegetate and keep vegetated with suitable species all earth cut or fill slopes feasible for re-vegetation, or other areas on which ground cover is destroyed, where it is deemed necessary during a joint review between an authorized official of the Forest Service and the NCDOT prior to completion of the highway; and the NCDOT shall maintain all terracing, water bars, lead-off ditches, or other preventive works that may be required to accomplish this objective. This provision shall also apply to slopes that are repaired following slides which occur during or after construction.
  7. The NCDOT shall establish no borrow, sand, or gravel pits, stone quarries, permanent storage areas, sites for highway operation and maintenance facilities, camps, supply depots, or disposal areas within the right-of-way, unless shown on approved construction plans, without first obtaining approval of an authorized official of the Forest Service.
  8. The NCDOT shall maintain the clearing of the right-of-way by means of chemicals only after consultation with an authorized official of the Forest Service. Consultation must address the time, methods, chemicals, and exact portion of the right-of-way to be chemically treated.
  9. The NCDOT in consideration of the grant of these easements, does hereby covenant and agree, as a covenant running with the land for itself, its successors and assigns, that (a) no person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed; (b) that the NCDOT shall use the easements and right-of-way hereby conveyed in compliance with all requirements imposed by or in pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary of Transportation, Part 21, "Nondiscrimination in Federally assisted programs of the Department of Transportation", implementing Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.
  10. In the event of breach of any of the above-mentioned nondiscrimination conditions, the FHWA shall have the right to re-enter said land, and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become

the absolute property of the Department of Agriculture-Forest Service, and it assigns, as such interest existed prior to this instrument.

11. When need for the easement herein granted no longer exists, the NCDOT shall give notice of that fact to the Secretary of Transportation and the rights herein granted shall terminate and the land shall immediately revert to the full control of the Department of Agriculture.

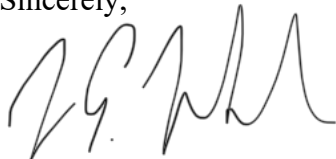
In addition, the Forest Service entered into a Programmatic Agreement (PA) with the Federal Highway Administration, The Advisory Council on Historic Preservation, North Carolina State Historic Preservation Office, Eastern Band of Cherokee Indians, and NCDOT to address the known effects to historic properties and possible future effects on cultural resources, which was executed on March 3, 2021. All construction activities for the A-0009C project shall be in conformance to this PA.

As discussed in a conference call between NCDOT and Forest Service staff on July 28<sup>th</sup>, 2022 and confirmed via email on the same day, USFS staff request the following three items:

1. If the two picnic table sites near the Appalachian Trail (AT) pull-off are impacted at all by construction, replacement or reconstruction shall mitigate damages to the sites.
2. Remove the AT kiosk sign prior to commencing construction and ensure delivery to USFS staff.
3. The first 50 feet of the old AT sections are to be covered over and brushed in so that it is abundantly clear those sections are to no longer be used by hikers.

You may authorize immediate entry under the above terms.

Sincerely,



JAMES E. MELONAS  
Forest Supervisor

Enclosures:

A-0009/Corridor K Project Map  
Easement deed conditions  
Legal Description for project right-of-way  
Construction Stipulations  
USFS Survey Report