



REQUEST FOR BOARD ACTION

ITEM NO. 11.

DATE OF MEETING: January 17, 2012

REQUESTED BY: Robert Vause, District Engineer, NCDOT

SHORT TITLE: Public Hearing and Resolution Requesting Abandonment from the State Maintained System a Portion on Test Farm Road (SR 1308) in Willard, North Carolina

BACKGROUND: The North Carolina Department of Transportation is filing an abandonment petition to abandon a portion of Test Farm Road in Willard from the State Maintained System. The area is depicted on the sketch attached to the supporting resolution. The Board of Commissioners is requested to adopt a resolution supporting and requesting the abandonment petition be approved by the Board of Transportation. Angus and Michael Phillips are the adjoining property owners on Test Farm Road.

It is Board policy to hold a public hearing prior to asking NCDOT to abandon a road or portion of a road on the State Maintained System. The public hearing has been properly advertised. A representative of NCDOT will be at the meeting to review the request with the Board.

SPECIFIC ACTION REQUESTED: The Board of Commissioners is requested 1) to hold a public hearing to receive public comment on abandoning from the State Maintained System a portion of Test Farm Road in Willard, and 2) to consider a resolution requesting NCDOT approve the abandonment petition to delete this portion of the road.

COUNTY MANAGER'S RECOMMENDATION

Respectfully recommend approval.

DS
Initial

RESOLUTION

NOW, THEREFORE BE IT RESOLVED by the Pender County Board of Commissioners that:

after holding a public hearing and receiving public comment, the Board hereby adopts the resolution entitled: "Resolution Supporting and Requesting abandonment from the State Maintained System a Portion of State Road 1308, Test Farm Road, Willard, North Carolina". The Chairman/County Manager is authorized to execute any/all documents necessary to implement this resolution.

AMENDMENTS:

MOVED _____ SECONDED _____

APPROVED _____ DENIED _____ UNANIMOUS _____

YEA VOTES: Brown ___ Tate ___ Rivenbark ___ Ward ___ Williams ___

Chairman Date

ATTEST Date



RESOLUTION SUPPORTING AND REQUESTING ABANDONMENT FROM THE STATE MAINTAINED SYSTEM A PORTION OF STATE ROAD 1308, TEST FARM ROAD, WILLARD NORTH CAROLINA

WHEREAS, the North Carolina Department of Transportation (NCDOT) has filed an abandonment petition to abandon a portion of Test Farm Road (SR 1308) in Willard from the State Maintained System; and

WHEREAS, the portion to be abandoned is depicted on a drawing entitled "Abandonment of Portion of Test Farm Road in Willard, North Carolina", a copy of which is attached hereto; and

WHEREAS, in accordance with NCDOT procedures, the Pender County Board of Commissioners is being asked for a resolution supporting and requesting abandonment of this section of Test Farm Road, which will be submitted to the Board of Transportation for final approval; and

WHEREAS, the Board of County Commissioners is of the opinion that the above described road should be abandoned and removed from the State Maintained System as petitioned by NCDOT. Once removed from the State Maintained System, responsibility for the roadway maintenance will be the responsibility of the property owners, who have indicated willingness to take on this responsibility; and

NOW, THEREFORE, BE IT RESOLVED by the Pender County Board of Commissioners that the North Carolina Department of Transportation is hereby requested to delete this portion of road from the State Maintained System.

Adopted this 17th day of January, 2012.

Chairman

ATTEST: _____
Rick Benton, County Manager

PROPERTY HISTORY WORKSHEET

Instructions: The purpose of the worksheet is to determine how best to proceed with Secondary Road Abandonment, Residue Property, Surplus Right of Way and Control of Access Revisions. The Worksheet must be completed by the Division Right of Way Agent and then returned to the Requesting District Engineer. The completed worksheet must accompany all requests for property disposals and all requests for control of access revisions.

Requesting District Engineer: ROBERT A. VAUSE, P.E.

Division: 3 County: PENDER City/Town: _____ Route: SR 1308

TIP No. N/A

State Project No. N/A

F.A. Project No. N/A

Station(s) N/A

DISTRICT 1
SEP 22 2010

Requesting Party or Agent for Requesting Party: NCDOT

Property location: 0.17 MI. EAST FROM INTERSECTION OF SR 1357 & 1309

PROPERTY RESEARCH:

Is property within existing right of way or outside existing right of way? inside existing

Has the claim been settled? Yes No

Was Right of Way claim settled by Deed, Easement, Agreement, Consent Judgment, or other?

Maintenance limits only

Was it recorded? Yes No If yes, Book _____, Page _____ (attach copy)

Is there controlled access? Yes No Is the area landlocked? Yes No

Are plans from the acquisition available? Yes No (if yes, attach copy)

Who owns the underlying fee to the property? UNKNOWN * SEE ATTACHED EXPLANATIONS

DETERMINATION:

SECONDARY ROAD ABANDONMENT: Area is located inside the existing right of way and was acquired by a secondary road agreement or by maintenance only. To be handled by the District Engineer as secondary road abandonment.

_____ **RESIDUE PROPERTY:** Area is beyond the originally proposed right of way limits. The area was purchased in conjunction with settlement of the right of way acquisition claim. To be handled by the District Engineer, Division Engineer and the Right of Way Branch.

_____ **SURPLUS RIGHT OF WAY:** Area is Department owned property that is within the originally proposed right of way limits. Area was acquired by recorded plat or right of way deed and is not a secondary road. To be handled by the District Engineer, Division Engineer, Right of Way Disposal and Control of Access Review Committee and State Highway Administrator.

_____ **CONTROL OF ACCESS REVISION:** Area is control of access on all completed highway projects and highway projects under construction. To be handled by the District Engineer, Division Engineer, Right of Way Disposal and Control of Access Review Committee and State Highway Administrator.

Eric Bay
Division Right of Way Agent

9/20/10
Date

cc: Secondary Roads Program Manager
Right of Way Branch Manager
Division Engineer

Abandonment of a Portion of SR 1308, Test Farm Road in Pender Co.

The District Engineer is considering the abandonment of a portion of SR 1308 as shown in the package.

This portion of SR 1308 is within railroad r/w that was obtained by NCDOT for future rail purposes. The railroad r/w was established many years ago by a private railroad. NCDOT acquired the railroad r/w from that private company several years ago.

We have no information as to when this portion of SR 1308 was constructed. The road is completely within the existing railroad r/w. There are no recorded road r/w agreements, or plats indicating a road r/w width, so we can only claim maintenance.

Please note, that NCDOT should only remove its maintenance responsibilities for the paved road section. It should be clear that NCDOT retains its railroad right of way, and in no way is NCDOT relinquishing any part of the railroad r/w by closing this section of SR 1308.



Eric Ray, Division R/W Agent

DISTRICT 1
NOV 02 2011



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

EUGENE A. CONTI, JR.
SECRETARY

October 31, 2011

Mr. Mike Phillips
Angus & Mike Phillips LLC
124 Phillips Dr.
Wallace, NC 28466

Subject: Execution of Encroachment Agreement

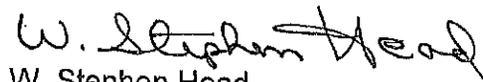
Dear Mr. Phillips:

Enclosed is a fully executed original copy of an Encroachment Agreement between the North Carolina Department of Transportation and the Angus & Mike Phillips, LLC covering future use of an abandoned portion of State Road 1308 (Test Farm Road).

Although the Department understands your desire to leave the railroad crossing in place until the railroad is returned to active service, the removal of this railroad crossing and its connection to State Road 1309 will improve the safety along this section of State Road 1309.

If you have any questions regarding this matter, please contact me at (919) 715-8746, or via e-mail: wshead@ncdot.gov

Yours truly,


W. Stephen Head
Corridor & Property Manager

Enclosure

Cc: Allan Paul, Rail Division-Director of Operations and Facilities
Glenn Crews, NCDOT County Maintenance Engineer-Pender County

wgm

MAILING ADDRESS:
NC DOT RAIL DIVISION
1553 MAIL SERVICE CENTER
RALEIGH NC 27699-1553

TELEPHONE: 919-733-4713
FAX: 919-715-6580

WEBSITE: WWW.BYTRAIN.ORG

LOCATION:
TRANSPORTATION BUILDING
1 SOUTH WILMINGTON STREET
RALEIGH NC

Rail
Corridor: W & W Branch

Nearest
Milepost: AC-210.20

State of North Carolina
County of : Pender

NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

RAILROAD RIGHT-OF-WAY
ENCROACHMENT AGREEMENT

-AND-

Angus and Mike Phillips LLC
124 Phillips Dr.
Wallace, NC 28466

THIS LICENSE AGREEMENT, made and entered into this the ^{7th}~~24~~ day of October, 2011 by and between the North Carolina Department of Transportation (NCDOT), an agency of the State of North Carolina ("Licensor"); and Angus & Mike Phillips LLC ("Licensee").

WITNESSETH:

THAT WHEREAS, the Licensee desires to encroach and has encroached on the right of way of the Rail Corridor as described on Exhibit A ("Premises") attached hereto and incorporated by reference, located in Pender County, North Carolina with the construction, maintenance, and use of an abandoned portion of State Road 1308 (Test Farm Road) that lies within the railroad's 130-foot right-of-way. The following alterations to the abandoned portion of Test Farm Road will be made: (1) the railroad crossing on the abandoned portion will be removed; (2) the centerline of the abandoned portion of Test Farm Road will be eliminated; and (3) NCDOT will perform no maintenance on the abandoned road.

NOW, THEREFORE, IT IS AGREED that Licensor hereby grants to Licensee the privilege to make this encroachment as shown on the attached plan sheet(s), specifications, and special provisions which are incorporated by reference upon the following conditions:

1. In consideration of Licensor's granting of this privilege to encroach upon Licensor's Premises, Licensee agrees to pay Licensor \$ 0.00 annually to Licensor beginning on the first day of the month following the execution of this License Agreement and to be paid each year thereafter on the same date for so long as this License Agreement is in effect. The Department will bill Licensee annually and payment is due upon receipt unless otherwise specified. The licensor shall periodically review the rental rate and adjust the rate accordingly based on fair market values with a minimum of 60 days advance notice of any changes to the Licensee.
2. A License only for the improvement, maintenance, and use of the encroachment is granted hereby. This grant shall not be construed to vest in the Licensee any other greater interest, and in no event is any warranty of said privilege hereby given by the Licensor, nor shall any warranty be implied from the terms of this agreement.
3. It is agreed between Licensor and Licensee that this license is personal to Licensee and shall not inure to the successors or assigns of Licensee. The parties understand and agree that any right or claim of Licensor created by this License Agreement shall inure to the benefit of, and be enforceable by, any successor or assignee of Licensor.
4. Licensor makes no warranties or representations regarding the condition of the Premises. Licensee accepts the use of the Premises "AS IS" and expressly waives any and all claims against Licensor relating to or arising from the condition of the Premises and the property surrounding the Premises, including, without limitation, any claims and costs related to environmental contamination (such as, without limitation, those claims which might arise under CERCLA, RCRA, and the North Carolina Oil Pollution and Hazardous Substances Act).

5. The installation, operation, and maintenance of the encroachment will comply with the North Carolina Department of Transportation's latest RAIL CORRIDOR PRESERVATION POLICY, POLICIES AND PROCEDURES FOR ACCOMMODATING UTILITIES ON HIGHWAY RIGHTS-OF-WAY and THE AMERICAN RAILWAY ENGINEERING AND MAINTENANCE OF WAY ASSOCIATION MANUAL, and such revisions and amendments thereto as may be in effect at the date of this agreement, all of which are hereby incorporated as terms and conditions of this agreement and may not be waived except by written agreement of all parties. Information as to these policies and procedures may be obtained from the North Carolina Department of Transportation.
6. The Licensee agrees to provide during construction and any subsequent maintenance proper signs, signal lights, flagmen, and other warning devices for the protection of traffic in conformance with the latest Manual on Uniform Traffic Control Devices for Streets and Highways and amendments or supplements thereto.
7. The Licensee shall improve and/or maintain the encroachment at Licensee's own cost and expense. The Licensor shall be exempt from any costs, charges, or assessments of any kind or character on account of or incident to the location and improvement of the encroachment within the limits of the right of way, or on account of any action or omission by the Licensee in connection therewith.
8. The Licensee agrees to install and/or maintain the encroaching facilities in such safe and proper condition that they will not interfere with or endanger existing or future uses by the Licensor of said right of way for railroad, trail, or other transportation purposes, nor obstruct nor interfere with the proper operation and maintenance of said right of way or any tracks, structures, or appurtenances thereon. The Licensee will reimburse the Licensor for any costs incurred including, but not limited to costs for repairs or maintenance to the Licensor's corridor, roadways, and structures resulting from the installation and existence of Licensee's encroachment.
9. The Licensee agrees to install and maintain the encroachment in such a manner as not to interfere with the proper drainage of the roadbed and right of way. The Licensee will not allow or permit the diversion of any additional drainage into existing drainage facilities or upon the right of way, and, moreover, the Licensee will arrange its drainage system so as to prevent the ponding of water upon the right of way.
10. In the event Licensee deems it necessary for Licensor to remove and relocate any structures or property of third persons or corporations, including, but not limited to, wire lines and poles or other supports, now located and constructed upon or near Licensor's right of way, the Licensee will remove and relocate or arrange for the removal or relocation of same without cost or expense to the Licensor, and in all respects in accordance with the requirements of the Licensor. Any utility changes must conform to specifications promulgated by the American Railroad Engineering and Maintenance of Way Association and the North Carolina Department of Transportation.
11. The Licensee agrees to protect, indemnify, and save Licensor wholly harmless from and against the consequences of any damages or loss of life, personal injury, or property which may be caused by or result from the improvement, maintenance or use of the encroachment, or the failure or neglect of the Licensee to maintain proper drainage in connection with the encroachment.
12. The Licensee agrees to restore all areas disturbed during installation or maintenance of the encroachment to the Licensor's reasonable satisfaction. The Licensee agrees to exercise every reasonable precaution during construction or maintenance to prevent eroding of soil; silting or pollution of rivers, streams, lakes, reservoirs, other water impoundments, ground surfaces, or other property; or pollution of the air. When any installation or maintenance operation disturbs the ground surface and existing ground cover, Licensee agrees to remove and replace the sod or otherwise reestablish the grass cover to the reasonable satisfaction of the Licensor.
13. Licensee shall comply with applicable rules and regulations of the North Carolina Department of Environment and Natural Resources, and ordinances and regulations of various counties, municipalities, and other official agencies relating to pollution prevention and control. Licensee agrees to comply with all federal, state and local environmental laws, rules, and regulations while subject to the terms of this agreement. None of the terms of this paragraph, or of this agreement elsewhere shall be construed as a waiver of any environmental regulations.

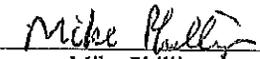
If hazardous or any other unauthorized material is discovered, and it is determined that such material is present as a result of action by Licensee, Licensee shall be solely responsible and hold the Department harmless for all costs associated with the removal of the material and any damages caused by the existence of said material.

14. It is agreed by all parties that this agreement shall become void if actual construction of the work contemplated herein is not begun within one (1) year from the date of authorization by the Licensor, unless written waiver is secured from the Licensor.
15. In the case of noncompliance with any of the terms of this agreement by Licensee, Licensor will give Licensee written notice of such noncompliance. If Licensee fails to comply to the reasonable satisfaction of the Licensor within sixty (60) days after receiving such written notice, unless written waiver is secured from the Licensor, the Licensor reserves the right to discontinue the use of the encroachment until it has been brought into compliance; or, alternatively, at no cost to the Licensor, Licensor may remove the encroachment from the right of way.
16. The Licensee agrees to give written notice to the Licensor within thirty (30) days of completion of all work contained herein.
17. The Licensee shall make all necessary changes to the reasonable satisfaction of the Licensor, at Licensee's own cost and expense, within sixty (60) days after written notice from the Licensor, to address the safety concerns of the Licensor or to accommodate the Licensor's use of the right of way for railroad, trail, or other transportation purposes, unless written waiver is secured from the Licensor. Such changes include, but are not limited to, the construction of a grade-separated facility for railroad, trail, or other transportation purposes; the installation, maintenance, and upgrading of any safety devices, signs, or other facilities necessary for the Licensor's use of the corridor; and any changes of location, height, depth, or design of the encroachment, or consolidation of at-grade crossings.
18. In the event the Licensor requires the removal of the encroachment from the right of way, then the Licensor shall have the right to demand such removal, and the Licensee, at its own cost and expense, within sixty (60) days after written notice from the Licensor, unless written waiver is secured from Licensor, shall discontinue the use of the same, remove the encroachment from the right of way, and restore the same to the condition existing prior to the location of the encroachment upon the right of way.
19. In the case of a utility encroachment, Licensee agrees to periodically monitor and verify the depth or height of the utility in relation to the Licensor's tracks and facilities, and to relocate the utility at Licensee's own cost and expense should such relocation or change be necessary to comply with the minimum clearance requirements of this agreement or any public authority.
20. If the operation, existence, or maintenance of the encroachment causes interference, physical, magnetic, or otherwise, with train control systems or facilities, or interference in any manner with the operation, maintenance, or use of the right of way, tracks, structures, pole lines, devices, other property, or any appurtenances thereto for railroad, trail, or other purposes, then in either event, Licensee, within sixty (60) days after written notice from the Licensor, at Licensee's own cost and expense, shall promptly make such changes in its encroachment as may be required in the reasonable judgment of the Licensor to eliminate all such interference, unless written waiver is secured from the Licensor.
21. If the Licensee undertakes to revise, renew, relocate, or change in any manner whatsoever all or any part of the encroachment plans, such plans shall be submitted to the Licensor for approval before any such change is made. After approval, the terms and conditions of this agreement shall apply thereto.
22. Reference attached Drawing No. AC-10.20

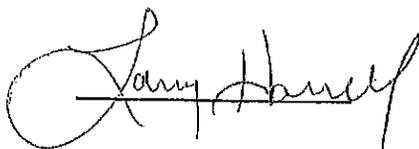
IN WITNESS WHEREOF, this Agreement has been executed by the Department of Transportation, an agency of the State of North Carolina, and the Licensee by and through duly authorized representatives, and is effective the date and year first set forth hereinabove.

ANGUS & MIKE PHILLIPS, LLC

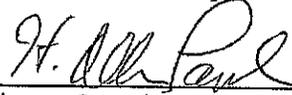
BY: 
Angus Phillips

BY: 
Mike Phillips

ATTEST:

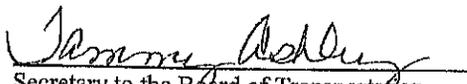


Department of Transportation

BY: 
Director-Operations & Facilities
Rail Division

ATTEST:

(Seal)


Secretary to the Board of Transportation
and Custodian of the Seal of the Department
of Transportation

23.