



REPLY TO
ATTENTION OF:

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

April 15, 2014

Regulatory Division

Action ID Number: SAW-2013-01700

Ms. Molly Davis, Chief, Wetlands Enforcement Section
Water Protection Division, Clean Water Enforcement Branch
U.S. Environmental Protection Agency
61 Forsyth Street, SW
Atlanta, Georgia 30303-8960

Dear Ms. Davis:

This letter is in reference to the activities allegedly conducted in waters of the United States, specifically wetlands adjacent to tributaries to the White Oak River and New River, on an approximately 80,000-acre project area, known as Hofmann State Forest, located on the north Side of US Highway 17, near Deppe, Onslow County, North Carolina. Also reference our February 19, 2014, teleconference with you, Mike Wylie and Phillip-Mancuso Ungaro, during which we discussed the activities that occurred at Hofmann Forest relative to site preparation activities associated with the establishment of loblolly and long leaf pine. Reference is also made to the March 14, 2014 meeting with representatives of Hofmann State Forest that included Mary Watzin, Dean of the College of Natural Resources, NC State University; David Ashcraft, Executive Director of Development and College Relations, Natural Resources Foundation, NC State University and Chad Evenhouse of Kimley-Horn Consultants. Messrs. Mike Wylie, Todd Bowers, and Phillip-Mancuso Ungaro from Region IV, US Environmental Protection Agency (US EPA) also participated by telephone. Our letter dated February 3, 2014, to Mr. David Ashcraft regarding these activities and the District's administrative record for this project is included with this correspondence. Additional information requested during our March 14 meeting can be downloaded at the following link:

<https://kimley-horn.securevdr.com/d/s20f6daad43746a08>

As discussed with you during the February 19 teleconference, we observed site preparation activities including road construction, strip shearing, bedding, and drainage, associated with site preparation for the purposes of establishing long leaf and loblolly pine on portions of Hofmann Forest. Based on our preliminary estimates and analysis of more recent aerial photography, the Corps has determined that these activities may have affected approximately 6,500 acres of waters of the United States, which are subject to the permitting requirements of Section 404 of the Clean Water Act (CWA) (33 USC 1344). Further consideration of the available data suggests that these site preparation activities commenced within this most recent decade and continued, intermittently, until as recently as 2012. Based on our subsequent discussion with representatives of Hofmann Forest, it is our understanding they undertook them in reliance on the NC Forestry Best Management Practices Manual (September 2006). Although we did not participate in the development of that document, we did work cooperatively with the forestry

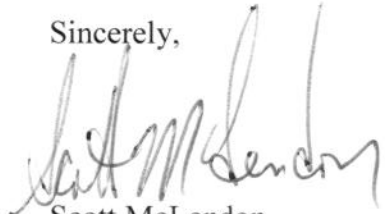
industry and the NC Forest Service to develop guidance for forest roads that is contained in that document. We reviewed the BMP manual and clarified to Hofmann Forest representatives that it does not specify ditch depths or spacing that may be constructed in order to satisfy the exemptions at 33 CFR 323.4.

During the March 14, 2014 meeting with the Corps and EPA, additional information from the Foundation, to include site history relative to the construction of roads, installation of drainage ditches, and locations of water control structures was requested. It is our understanding that the Foundation is collecting this and will forward to you upon completion. We also understand that the property is currently optioned for purchase and the Hofmann Forest representatives desire that this matter be resolved as expeditiously as possible.

The District believes that the ditching activity, as described above and in February 3, 2014 letter to the Foundation (enclosed), exceeds that allowed under 404 f (1). In this regard and in light of the Interpretive Rule recently implemented by the US EPA, and after consideration of the nature and extent of the activities that have occurred on the site, we believe it is appropriate that Region IV, US EPA provide clarification regarding activities on farming, ranching, and forestry lands that may be exempt from DA permitting requirements as provided for at 404 f (1) a. Therefore, in accordance with the January 19, 1989, Memorandum of Agreement between the Department of Army (DA) and the Environmental Protection Agency concerning Federal Enforcement for the Section 404 Program of the Clean Water Act, as well as the December 3, 2012, Memorandum for the DA and the EPA regarding Section 404 CWA enforcement coordination, the Corps, as the investigating agency, concludes that the EPA is the appropriate lead agency for the above-cited activities. The Corps looks forward to assisting the EPA in resolving this matter.

If you have any questions regarding this case or require any additional information, please contact me or Mr. Mickey Sugg of the Wilmington Regulatory Field Office, telephone 910-251-4811 or e-mail at Mickey.T.Sugg@usace.army.mil.

Sincerely,



Scott McLendon
Chief, Regulatory Division
Wilmington District

Enclosure

Blind Copies Furnished:

CESAW-RG/McLendon, Wicker, Frye
CESAW-RG-W/Biddlecome, Greer
CESAW-RG-L/Sugg
CESAW-OC/Pruitt