



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PAT L. MCCRORY
GOVERNOR

ANTHONY J. TATA
SECRETARY

September 16, 2013

U.S. Army Corps of Engineers
Regulatory Field Office
151 Patton Avenue, Room 208
Asheville, NC 28801-5006

ATTN: Mr. Steve Kichefski
NCDOT Coordinator

Subject: **Mitigation Modification Request for Individual Section 404 Permit
and to Individual Section 401 Certification for R-0211DA**
I-485 Charlotte Outer Loop, Mecklenburg County
NCDOT Division 10, T.I.P. Project Number R-0211DA
Debit \$570.00 from WBS Element 34331.3.2

References:

- May 19, 2003 Letter from the Corps of Engineers to Gregory J. Thorpe regarding Action ID #199200013
- Acceptance letter from the N.C. Ecosystem Enhancement Program dated October 3, 2011

Dear Mr. Kichefski:

This letter addresses the mitigation requirements specified in the R-0211DA project permits to offset the mitigation deficit associated with the Little Sugar Creek Wetland Mitigation Site. The North Carolina Department of Transportation (NCDOT) constructed the Little Sugar Creek Site in the winter of 1996-1997 to offset impacts associated with the construction of the Charlotte Outer Loop (TIP No. R-00211DA). The site did not consistently perform in accordance with the approved mitigation plan despite several attempts to remediate the site. Considerable coordination has taken place with the regulatory agencies, including the U.S. Army Corps of Engineers regarding this site (see attached letter).

In a letter dated October 3, 2011, the N.C. Ecosystem Enhancement Program (EEP) agreed to replace the unfulfilled mitigation from Little Sugar Creek with credits from other sites, pending modification of the project permits (see attached letter). The NCDOT requests that all permits for this project be modified to reflect that the EEP will provide the referenced mitigation credits.

MAILING ADDRESS:
NC DEPARTMENT OF TRANSPORTATION
PROJECT DEVELOPMENT & ENVIRONMENTAL ANALYSIS UNIT
1598 MAIL SERVICE CENTER
RALEIGH NC 27699-1548

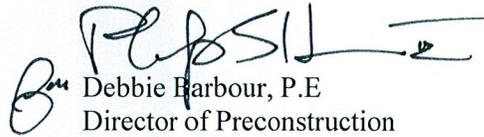
TELEPHONE: 919-707-6000
FAX: 919-212-5785
WEBSITE: NCDOT.GOV

LOCATION:
CENTURY CENTER, BUILDING B
1020 BIRCH RIDGE DRIVE
RALEIGH NC 27610

A copy of this modification request will be posted on the NCDOT website at:
<https://connect.ncdot.gov/resources/Environmental>

Thank you for your assistance with this project. If you have any questions or need additional information, please contact Ms. Carla Dagnino (919) 707-6110.

Sincerely,


Debbie Harbour, P.E.
Director of Preconstruction

cc: Alan Johnson, NCDWR
Amy Chapman, NCDWR
Sonia Carrillo, NCDWR
Beth Harmon, EEP
Henry Wicker, USACOE
Phillip Ayscue, NCDOT
Majed N. Al-Ghandour, NCDOT

NCDOT Permit Application Standard Distribution List W/attachment



DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1890
WILMINGTON, NORTH CAROLINA 28402-1890

REPLY TO
ATTENTION OF:

May 19, 2003

Regulatory Division

Action ID: 199200013; TIP No: R-0211 DA/DB/DD

Dr. Gregory J. Thorpe, PhD., Manager
North Carolina Department of Transportation
Project Development and Environmental Analysis Branch
1548 Mail Service Center
Raleigh, North Carolina 27699-1548

Dear Dr. Thorpe:

Reference the Department of the Army (DA) permit issued to the North Carolina Department of Transportation (NCDOT) on May 19, 1992 and modified May 6, 1993 that authorized the construction of a 5.4-mile long segment of the Charlotte Outer Loop Highway (I-485) between NC Highway 51 and Rea Road south of Charlotte, Mecklenburg County, North Carolina. The purpose of this letter is to review NCDOT's efforts to provide wetland mitigation required under this DA permit.

Special Condition No. 3 of the modified permit required that the NCDOT provide 22.2 acres of viable forested wetland as mitigation for impacts resulting from construction of R-0211 DA/DB/DD. The NCDOT subsequently constructed a 9.1-acre bottomland hardwood (BLH) mitigation site at Mallard Creek and a 13.1-acre BLH site at Little Sugar Creek in to fulfill this requirement. The Little Sugar Creek Site has been monitored for a period of 6 years and, based on your monitoring reports, has yet to demonstrate any consistent trends toward meeting the hydrology success criterion of the referenced permit. We have concluded that the Little Sugar Creek Site has failed to provide any of the required wetland mitigation and shows no promise toward meeting this requirement in the foreseeable future. Consequently, the NCDOT is in violation of the referenced permit and should proceed expeditiously to secure an additional 13.1 acres of wetland to replace the Little Sugar Creek Site.

As discussed with your staff during the March 11, 2003 Mitigation Monitoring Report Meeting, we are willing to consider a number of options including wetland restoration and/or preservation of high quality sites to make up the immediate 13.1-acre deficit. Due to the fact that the Charlotte Outer Loop impacts wetlands in several river basins, we would consider suitable sites in the Rocky River, Lower Catawba, Upper Catawba and South Fork Catawba basins. Although a single site would be preferred, we would also consider multiple sites and recommend that the NCDOT inventory successful in-house and full delivery locations for surpluses. We also recommend that you survey proposed stream mitigation sites in the area such as the Back Creek

and Little Coldwater Creek Sites for wetland mitigation potential. At this meeting we also discussed the fact that portions of the Mallard Creek and Long Creek Mitigation Sites have failed to consistently meet the hydrology success criterion. We therefore recommend that NCDOT also begin planning for some additional future wetland deficits associated with the Charlotte Outer Loop Highway.

Please provide a detailed written plan indicating the steps that NCDOT intends to take to comply with the referenced permit condition and make up the 13.1-acre wetland deficit at Little Sugar Creek. This plan should include an appropriate schedule and should be submitted within 30 days of the date of this letter. Following review of your response, we will determine if further administrative action is necessary. Such action may include suspending the processing of applications for the remaining sections of I-485 or the formal suspension/revocation of existing DA permits for this highway.

If you have any questions, please contact me or Mr. Steven Lund, Asheville Regulatory Field Office at telephone 828-271-7980.

Sincerely,

Charles R. Alexander, Jr.
Colonel, U.S. Army
District Engineer

Copy Furnished:

Mr. Phillip S. Harris, III, Manager ✓
North Carolina Department of Transportation
Office of Natural Environment, PDEA
1598 Mail Service Center
Raleigh, North Carolina 27699-1548



October 3, 2011

Mr. Gregory J. Thorpe, Ph.D.
Manager, Project Development and Environmental Analysis Branch
North Carolina Department of Transportation
1548 Mail Service Center
Raleigh, North Carolina 27699-1548

Dear Dr. Thorpe:

Subject: Little Sugar Creek Wetland Mitigation Site, Mecklenburg County
Catawba River Basin, Cataloging Unit 03050103
TIP R-0211DA, I-485 – Charlotte Outer Loop

This purpose of this letter is to notify you that the Ecosystem Enhancement Program (EEP) will provide the additional wetland mitigation required to offset the wetland mitigation deficit associated with the Little Sugar Creek Wetland Mitigation site. According to information provided by the NCDOT, the remaining wetland mitigation amounts required for the deficit associated with the Little Sugar Creek Wetland Mitigation site is 13.10 riparian wetland mitigation credits.

The Little Sugar Creek Wetland Mitigation site, located in the Catawba River basin cataloging unit 03050103, was constructed by the NCDOT in the winter of 1996-1997 to offset unavoidable wetland impacts associated with the construction of the Charlotte Outer Loop (TIP Number R-0211DA). The NCDOT has made several attempts to remediate the site hydrology; however, the site has not consistently yielded the prescribed optimum hydrology or performed in accordance with the approved mitigation plan. While the post-construction monitoring period has ended, the mitigation site has not yet been formally closed out with the regulatory agencies.

In a letter dated August 29, 2003 to the USACE, the NCDOT proposed to utilize the following mitigation sites and associated wetland mitigation credits to offset the impacts associated with the referenced TIP project that were not met at Little Sugar Creek mitigation site:

Mitigation Site	River Basin	CU	Phase	Type	Available Credits*
Pott Creek	Catawba	03050102	Long Term Management	Riparian	5.45
Key Branch	Yadkin	03040104	Monitoring Close Out	Riparian	7.65

*NOTE: Phase and available mitigation credits as of September 7, 2011.

The Little Sugar Creek wetland mitigation site was discussed at the April 28 and 29, 2004 mitigation monitoring meeting attended by the NCDOT, EEP and environmental regulatory agencies. At the meeting, it was determined that the Little Sugar Creek mitigation site could be closed out; however, no wetland mitigation credits would be granted and the NCDOT would need to mitigate for the wetland impacts associated with the Charlotte Outer Loop (TIP R-0211DA) at an alternative mitigation site(s).

Restoring... Enhancing... Protecting Our State



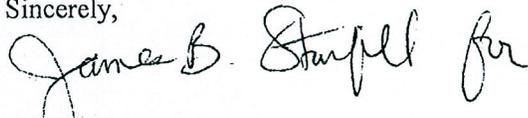
Mr. Greg Thorpe
October 3, 2011
Page Two – TIP R-0211DA
Little Sugar Creek Wetland Mitigation Site

Also at the meeting, the environmental regulatory agencies agreed that the NCDOT will address the wetland deficit from the Little Sugar Creek mitigation site as outlined in the August 23, 2003 letter. The NCDOT received approval of their proposal after active off-site mitigation projects were transferred to the EEP for continued development and management of the mitigation assets.

After EEP was made aware of this prior agreement, the wetland restoration mitigation credits from the Pott Creek and Key Branch mitigation sites were placed on hold awaiting issuance of the permit modifications from the USACE and NCDWQ for TIP Number R-0211DA. EEP also worked on the Little Sugar Creek mitigation site with a consultant in an effort to develop a process to obtain some wetland mitigation credits through alternative methods since the site is providing environmental uplift to the area. Several presentations on a method to calculate environmental uplift of a site to wetland credits were made to the environmental regulatory agencies but EEP was unable to get a consensus from the group for the proposal. Also, the cost per potential wetland credit continued to grow to the point it was no longer feasible to consider. EEP has stopped the current efforts and has recommended that the NCDOT officially close the Little Sugar Creek wetland mitigation site.

EEP will debit the mitigation site(s) identified above with the amounts proposed once the permit modifications are issued by the USACE and NCDWQ. If you have any questions or need additional information, please contact Beth Harmon at 919715-1929.

Sincerely,



Michael Ellison
EEP Deputy Director

cc: Mr. Scott McLendon, USACE – Wilmington Regulatory Field Office
Mr. Todd Tugwell, USACE – Falls Lake
Mr. Brian Wrenn, Division of Water Quality, Wetlands/401 Unit
Mr. Randy Griffin, Jr., NCDOT – PDEA
Ms. Linda Fitzpatrick, NCDOT – PDEA
File: R-0211DA (Little Sugar Creek)

Restoring... Enhancing... Protecting Our State

