



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

NCDOT Umbrella Mitigation Banking Instrument

For the
North Carolina Department of Transportation Statewide Umbrella
Wetland and Stream Mitigation Bank

Sponsor: North Carolina Department of Transportation

Commenting Federal Agency: Federal Highway Administration,
North Carolina Division

Interagency Review Team:

U.S. Army Corps of Engineers
U.S. Environmental Protection Agency
U.S. Fish and Wildlife Service
National Marine Fisheries Service

North Carolina Department of Natural Resources; Division of Water Quality, Division of
Coastal Management, Wildlife Resources Commission and Division of Marine Fisheries

NCDOT Umbrella Mitigation Banking Instrument

For the
North Carolina Department of Transportation
Statewide Umbrella
Wetland and Stream Mitigation Bank

Last Revised (*date*)

This North Carolina Department of Transportation Umbrella Mitigation Banking
Instrument (NCDOT UMBI) is made and entered into on the ____ day of
_____, 2008, by the

- North Carolina Department of Transportation (NCDOT) (Sponsor)
Project Development and Environmental Analysis Branch
1 South Wilmington Street, Raleigh, N.C. 27699-1548
(919) 733-3141, FAX (919) 733-9794
and the U. S. Army Corps of Engineers (Corps), and each of the following agencies,
upon its execution of this NCDOT UMBI;

MAILING ADDRESS:
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TRANSPORTATION BUILDING
1 SOUTH WILMINGTON STREET
RALEIGH NC

- the Environmental Protection Agency (EPA),
- the U.S. Fish and Wildlife Service (USFWS),
- the National Marine Fisheries Service (NMFS),
- the North Carolina Department of Natural Resources (NCDENR)- Division of Water Quality (DWQ), Division of Coastal Management (DCM), Wildlife Resources Commission(WRC) and Division of Marine Fisheries (DMF), and the
- Federal Highways Administration (FHWA).

The Corps, together with the State and Federal agencies that execute this NCDOT UMBI for the NCDOT Statewide Umbrella Wetland and Stream Mitigation Bank (Umbrella Bank), are hereinafter collectively referred to as the Umbrella Mitigation Bank Review Team (Umbrella IRT). This NCDOT UMBI shall become effective upon execution by the NCDOT, the Corps, and one or more of the other agencies.

This NCDOT UMBI governs the establishment, use, operation, and maintenance of the Umbrella Bank. This NCDOT UMBI sets the framework by which individual mitigation sites (Bank Sites) will be added to this NCDOT UMBI as they are identified. This NCDOT UMBI also sets the framework by which IRTs for each Bank Site (IRT) will review Site Specific Mitigation Plans and NCDOT UMBI Addenda. Changes to the NCDOT UMBI will be formatted as NCDOT UMBI Addendum(s). It is the intent of this agreement to enable the parties hereby to eliminate redundancy in administration and focus review and resources on technical issues related to the development, implementation, and success of Site Specific Mitigation Plans for each Bank Site added to this NCDOT UMBI. Regulatory and resource agencies do not surrender any authority if they do not sign the UMBI.

I. General Provisions

Purpose: The primary purpose of the Umbrella Bank is to manage the credits available on NCDOT's legacy mitigation sites. Legacy sites are those mitigation sites that were originally developed by NCDOT and were transferred in various stages of development to EEP for property and credit management. The goal of the Umbrella Bank is to restore, enhance, create and/or preserve tidal and non-tidal wetlands, riparian systems, streams, and contiguous buffer corridors and their functions and values to compensate for unavoidable and permitted wetland and stream impacts for proposed NCDOT transportation improvement projects. In addition, this NCDOT UMBI establishes guidelines and responsibilities for the establishment, use, operation, maintenance, “close-out” and transition of ownership of the NCDOT Umbrella Bank and addended Bank Sites.

B. Use of Credit: Use of credits from the Umbrella Bank to offset wetland and stream impacts authorized by Clean Water Act permits must be in compliance with the Clean Water Act and implementing regulations, including but not limited to the 404(b)(1) Guidelines, the National Environmental Policy Act (NEPA), the Coastal Area Management Act, and all other applicable Federal and State legislation, rules and regulations. This agreement has been drafted following the regulations set forth in Compensatory Mitigation for Losses of Aquatic Resources, Final Rule (33 CFR Part 325 and 332), April 10, 2008.

C. IRT: The Umbrella IRT shall be chaired by the representative of the U.S. Army Corps of Engineers, Wilmington District. The Umbrella IRT shall facilitate the establishment of the NCDOT UMBI and facilitate reaching consensus on Bank Sites. The Umbrella IRT shall monitor the accounting ledger for the Umbrella Bank. The Umbrella IRT shall consist of:

- U.S. Army Corps of Engineers, Wilmington District (Chair)
- U.S. Environmental Protection Agency, Region 4
- U.S. Fish and Wildlife Service
- National Marine Fisheries Service
- North Carolina Department of Natural Resources
 - Division of Water Quality
 - Division of Coastal Management
 - Wildlife Resources Commission
 - Division of Marine Fisheries

The IRT will be comprised of the same agencies included on the Umbrella IRT. The IRT is responsible for reviewing Site Specific Prospectuses, Site Specific Mitigation Plans and coordinating with the Umbrella IRT any NCDOT UMBI Addenda that may be required. The IRT shall also review monitoring and accounting reports for individual Bank Sites as described below. In addition, the IRT will review proposals for remedial actions proposed by NCDOT or any of the agencies represented on the IRT. The IRTs will work to seek consensus on its actions. As Chair, the USACE shall have responsibility for making final decisions on a project specific basis regarding the use of a mitigation bank for purposes of Section 404 and Section 10 compliance when a consensus cannot be reached within a time frame of 30 days from the date of submittal of a complete site specific prospectus. Compensatory mitigation decisions regarding CAMA Coastal Wetlands shall be made by the NC Division of Coastal Management (DCM) under the authority of the Coastal Area Management Act.

D. Bank Sites/Mitigation Plans: NCDOT retains legal rights to develop or sponsor wetland and stream mitigation projects throughout the State of North Carolina to satisfy Sections 404/401 and Section 10 permitting requirements compliance. NCDOT is also developing plans to establish and/or maintain wetland communities and streams as part of this Umbrella Bank. Mitigation projects that will be included as part of the Umbrella Bank will be called Bank Sites. A Bank Site may include one or more parcels of land and may include one or more forms/types of mitigation (wetlands and streams for restoration, creation, enhancement, preservation, etc.). Each Bank Site will be subject to the terms of the NCDOT UMBI as well as a site specific NCDOT UMBI Addendum, as necessary. Through various other agreement mechanisms, such as permit actions, NCDOT and member agencies have already established and are implementing agreements regarding mitigation sites that will not be subject to or superseded by this agreement. The need for supplemental site-specific information will be addressed on a case-by-case basis through individual Site Specific Mitigation Plans and NCDOT UMBI Addenda submitted to the IRT for each respective Bank Site for approval. This NCDOT UMBI may be amended to include additional mitigation types (such as alternative mitigation) or Bank Sites, subject to the reasonable notice by NCDOT for review and

approval by the Corps and IRT. If consensus is not achieved, the potential exists that the non-concurring agency may object to the use of that site for a particular impact.

E. Location and Ownership: Under this NCDOT UMBI, NCDOT will restore, enhance, create and/or preserve wetland and stream systems in North Carolina, in accordance with the provisions of this NCDOT UMBI, and then protect these systems in perpetuity. NCDOT shall place a conservation easement on each Bank site, unless otherwise approved by the Corps, in its restored, enhanced, or preserved condition in perpetuity.

F. Baseline Conditions: Each Bank Site (containing wetland, stream, and/or riparian buffers) proposed for inclusion in the Umbrella Bank will be submitted as an addendum to this document (Site Specific Mitigation Plan/ NCDOT UMBI Addendum). A detailed description of the baseline conditions (pre-mitigation) for each Bank Site will be contained in the Pre-Application Prospectus and Site Specific Mitigation Plans, also referred to as NCDOT UMBI Addendum(s) to this document, to be provided to the Bank Site IRTs for approval of Bank Sites. The total existing acreage, linear footage and square footage for each wetland, stream and/or buffer mitigation site will be included in the Site Specific Mitigation Plan. This information will include a detailed discussion of areas within the proposed Bank Site that have potential for restoration, enhancement, creation, or preservation based upon the ecological suitability of a site for achieving the goals and objectives of the Umbrella Bank. Monitoring reports will also be provided on an annual basis for each site.

II. Authorities

All applicable statutes, regulations and guidance documents will be complied with as well as all revisions, clarifications and updates of the above statutes, regulations and guidance documents. Therefore, as documents are prepared pursuant to this agreement, they will conform to the standards or guidelines in place at the time of submission, not necessarily at the time the NCDOT UMBI was approved.

Authority of the Corps: The Corps, who will be the official lead/chair for the IRT, shall be responsible for convening the Umbrella IRT and designating Points of Contact (POCs) for the Corps and IRT. The Corps, after consultation with the appropriate Federal and State review agencies through the permit review process, shall make final decisions concerning the amount and type of compensatory mitigation to be required for unavoidable, permitted wetland and stream impacts. The Corps also decides, after consultation with all appropriate agencies, the use of credits from the Umbrella Bank and the amount and type of credits that are necessary to offset those impacts. The Corps will be responsible for reviewing accounting reports/ledger for the Umbrella Bank.

Once membership is established, the Corps will convene the IRT members for individual Bank Sites. These Bank Site IRT members will review the Site Specific Mitigation Plans and NCDOT UMBI Addenda. The Bank Site IRTs will not amend the NCDOT UMBI. The Umbrella Bank NCDOT UMBI will be subject to the Umbrella Bank IRT referenced in this document and established by the Corps. The Corps will also coordinate with NCDOT in establishing additional technical resources for Bank Site IRTs, as needed to assist the IRT in performing its technical evaluation of Site Specific Mitigation Plans.

NOW, THEREFORE, the parties agree to the following:

III. Operational Provisions

1. Establishment of the Umbrella Bank and Bank Sites

A. Establishment of the Umbrella Bank: NCDOT will obtain all appropriate environmental documentation, permits, or other authorizations needed to establish and maintain the Umbrella Bank. This NCDOT UMBI does not fulfill or substitute for such authorization. This NCDOT UMBI does fulfill authorization for establishment, use, operation, and maintenance of an Umbrella Bank to be administered by NCDOT pursuant to the Guidance.

B. Establishment of Bank Sites and NCDOT UMBI Addenda: NCDOT will obtain all appropriate environmental documentation, permits, or other authorizations needed to establish and maintain the Bank Sites. This NCDOT UMBI does not fulfill or substitute for such authorization. This NCDOT UMBI and NCDOT UMBI Addenda do fulfill authorization for the establishment, use, operation and maintenance of Bank Sites to be administered via the NCDOT UMBI.

C. Perpetual Protection/ Real Estate Provisions: Property subject to the NCDOT UMBI and authorized by the Corps as a mitigation bank site, shall be perpetually protected by a conservation easement, unless otherwise approved by the Corps. Grantees of these CE's shall be approved by the Corps. All CE's will follow USACE guidance. Upon written approval by the Corps Office of Counsel, the CE will be recorded in the land records at the Office of the Clerk of the Superior Court in the county in which the land lies. A copy of the recorded CE, showing book and page numbers of the recorded location, shall be provided to Office of Counsel. Subsequent to the recording of the CE, the NCDOT may convey the Bank Site property either in fee or by granting an easement to a qualified land trust, state agency, or other appropriate nonprofit organization. The terms and conditions of this conveyance shall not conflict with the intent and provisions of the CE nor shall such conveyance enlarge or modify the uses specified in the CE.

2. Operation of Umbrella Bank and Bank Sites

A. Umbrella Bank Geographic Service Area: The Geographical Service Area (GSA) is the designated area wherein a bank can reasonably be expected to provide appropriate compensation for impacts to streams and wetlands. The GSA for the NCDOT UMBI may include a primary and secondary service area. These service areas will be determined by the IRT for each Bank site. Banking Sites would be sited as needed to compensate for future NCDOT transportation improvement projects planned within each drainage basin. Each Bank Site would provide mitigation within Service Areas, as established for North Carolina by the IRT agencies. Use of a Bank site to compensate for impacts beyond the geographic service area may be considered by the IRT on a case-by-case basis.

B. Pre-Application Prospectus: A Pre-application Prospectus will be developed by NCDOT and submitted to the Bank Site IRT for each Bank Site. A Pre-application Prospectus will contain information such as:

- Location of the site including maps, physiographic province, river basin, watershed, hydrologic unit.
- Site condition including present/recent land use and adjacent area land use.
- Ownership of the Bank Site, whether it is a willing seller, and status of land exchange/control by NCDOT; Encumbrances, utility easements, etc. on the land.
- Preliminary Site Plan and how functions will be improved.
- Available Monitoring Reports.

C. Site Specific Mitigation Plans/NCDOT UMBI Addenda: Site Specific Mitigation Plans and NCDOT UMBI Addenda will be developed by NCDOT and submitted to the Bank Site IRT for each Bank Site.

D. Phasing: It is possible for unforeseen reasons, though not required or desired, that the Bank Sites or portions thereof may be developed in several phases which shall be set forth in the Site Specific Mitigation Plans. Scope and timing of each phase shall be at the discretion of NCDOT, subject to Bank Site IRT approval. However, if NCDOT develops areas in excess of the areas for which design has been approved by the Bank Site IRT, NCDOT must receive approval for this modification of the Site Specific Plan prior to credits being accepted. Credit release for a Bank Site or phases of a Bank Site will be based on the credit release schedule (or as amended in NCDOT UMBI Addendum) and achievement of the defined Success Criteria contained in the Site Specific Mitigation Plan for the Bank Site or phase of a Bank Site. If phasing is used on a Bank Site, each phase will be individually reviewed, tracked, and monitored with subsequent credit release.

E. As-Built Report: NCDOT shall use its best effort to submit an as-built report for each Bank Site or phase of a Bank Site to the Bank Site IRT as soon as practical after construction of the site. The intent is to have the contractor complete and the NCDOT submit the as-built report as soon as possible..

F. Access to Bank Sites: The members of the IRTs will be allowed reasonable access to the property of Bank Sites through coordination with NCDOT for the purposes of inspection of the Bank Sites and compliance monitoring of the Site Specific Mitigation Plans.

3. Establishment and Use of Credits

A. Geographic Service Area (GSA): The Geographical Service Area (GSA) is the designated area wherein a bank can reasonably be expected to provide appropriate compensation for impacts to streams and wetlands. The GSA for the NCDOT UMBI may include a primary and secondary service area. These service areas will be determined by the IRT for each Bank Site.

B. Site Specific Mitigation Plans: Site Specific Mitigation Plans are intended to result in specific forms, amounts and types, in acres (wetlands), linear feet (stream), or square feet (buffers) of compensatory mitigation. Each Site Specific Mitigation Plan will detail the anticipated mitigation credits categorized by form and type to be generated at the site.

It is anticipated by the parties to this agreement that use of mitigation credits in each Bank Site shall be “in-kind” whenever possible. Alternative mitigation types, as listed in the dichotomous key for the 16 wetland types in the North Carolina Wetlands Assessment Methodology (NCWAM), will be considered but must be approved by the regulatory permitting agencies or the USACE on a case-by-case basis.

C. Mitigation Ratios: In general or every one acre of impact for wetlands, two credits will be debited from the NCDOT UMBI. One of those credits must be a restoration credit; the remaining credit will be made up of any combination of restoration, enhancement, creation or preservation credits, as selected by the Sponsor and approved by the USACE and other state permitting agencies during its permit process. Deviations from this compensation ratio may be authorized by the USACE or the state permitting agency on a case-by-case basis where justified. Justifications may consider functions of the wetlands impacted, the severity of the wetland impacts, whether the compensatory mitigation is in-kind, whether full success criteria have been met and the physical proximity of the wetland impacts to the Bank Site. It should be noted for wetland impacts that in all cases, a minimum of a one-to-one ratio of impact acres to restoration mitigation credits (acres) must be met unless some other form of mitigation is approved.

Restoration Equivalents:

- 1 acre of Restoration is equal to 1 restoration equivalent
- 2 acres of Enhancement is equal to 1 restoration equivalent
- 3 acres of Creation is equal to 1 restoration equivalent
- 5 acres of Preservation is equal to 1 restoration equivalent

It is anticipated that due to the duration of the anticipated longevity of the Umbrella Bank, deviations from this compensation ratio may be made if new guidance is developed by the USACE.

Compensation ratios for streams shall generally follow the guidelines provided in the *North Carolina Stream Mitigation Guidelines* (April 2003). Deviations from these guidelines may be authorized by the USACE or the NCDWQ on a case-by-case basis where justified by considerations of functions of the streams impacted, the severity of the stream impacts, whether full success criteria have been met and the physical proximity of the stream impacts to the Bank Site.

4. Credit Release

A. Guidance for Immediate Release of Credits: As general guidance for the Umbrella Bank, fifteen percent (15%) of the total restoration and/or enhancement credits of each Bank Site shall be available for use by the NCDOT immediately upon completion of all of the following:

1. Execution of this UMBI by the Sponsor, the USACE, and other agencies eligible for membership in the IRT who choose to execute this Agreement;
2. Approval of Site Specific Mitigation Plan(s);
3. Recordation of the preservation mechanism, as well as a title opinion covering the property acceptable to the USACE and the IRT;

Additionally, the Sponsor must complete the initial physical and biological improvements to each bank site pursuant to its mitigation plan no later than the first full year following initial debiting of the Umbrella Bank for the Bank Site.

Provided such physical and biological improvements are made to the IRT in accordance with an approved mitigation plan, an additional 15% (total 30%) of the banks total credits shall be available for sale.

B. Guidance for Subsequent Release of Credits: Subject to the Sponsor's continued satisfactory completion of all required success criteria and monitoring, additional restoration mitigation credits for each Bank site will be available for use by the Sponsor on the following schedule that is detailed below.

1. WETLANDS:

- 10% after first year, if interim success measures are met (total 40%);
- 15% after second year; if interim success measures are met (total 55%);
- 20% after third year; if interim success measures are met (total 75%);
- 10% after fourth year; if interim success measures are met (total 85%);
- 15% after fifth year, if Success Criteria are met (total 100%); and

2. STREAMS:

The following credit release applies only to those stream projects where Restoration or Enhancement I has been performed where pattern, dimension, and profile, or dimension and profile (respectively) have been improved. Projects constructed on the outer coastal plain that are subject to the Coastal Plain Information Paper (USACE/DWQ 2007) where an engineered stream channel was not constructed, will be subject to the criteria enumerated for wetlands above:

If deemed appropriate by the IRT, fifteen percent (15% of a banks total stream credits shall be available for sale immediately upon completion of all of the following:

- 1) Execution of the mitigation banking instrument by the Sponsor, the Corps, and other agencies eligible for membership in the IRT who choose to execute the agreement;
- 2) Approval of the final mitigation plan;
- 3) Delivery of the financial assurances;
- 4) Recordation of the preservation mechanism, as well as the title opinion covering the property that is acceptable to the Corps.

Additional stream credits would be available according to the following release schedule

- Construction release:
15% upon completion of all physical and biological improvements made pursuant to the mitigation plan: (30% cumulative).
- After year 1:

10% provided channel is stable and all other success criteria are met (40%).

- After year 2:
10% provided channel is stable and all other success criteria are met (50%).
- After year 3:
•
10% provided channel is stable and all other success criteria are met (60%).
- After year 4:
10% provided channel is stable and all other success criteria are met (70%).
- After year 5:
15% provided channel is stable and all other success criteria are met (85%).

A reserve of 15% of the banks total stream credits shall be released any time after 2 bank-full events have occurred, in separate years, provided the channel stable and all other success criteria are met. In the event that less than two bank-full events occur during the monitoring period, remaining credit release shall be at the discretion of the MBRT.

3. PRESERVATION

100% of the preservation credits shall be available immediately upon satisfaction of General Guidance for Immediate Release of Credits;

C. Other Considerations for Credit Release: Other Considerations for Credit Release: Sites at advanced stages will have credits released based on the milestone achieved at the time the site is brought into this UMBI. The above schedules apply only to the extent the Sponsor documents acceptable survival and growth of planted vegetation, attainment of acceptable stream/wetland hydrology as described under the success criteria in the monitoring section of the mitigation plan. With the exception of preservation sites, the final 15% of credits will be available for use only upon a determination by the IRT of functional success as defined in the mitigation plan.

Approval of Site Specific Mitigation Plan(s) pursuant to 33CFR Part 332 is required.

Additionally, it is anticipated that Site Specific Mitigation Plans may contain alternative release schedules as described above for specific Bank Sites. The alternatives will be made only upon mutual agreement by the IRT and Sponsor.

D. Annual Report: The Sponsor shall prepare an annual report on each anniversary of the date of execution of this agreement. This report will show all credits used, and the balance of credits remaining, to each member of the IRT, until such time as all of the credits have been utilized, or this agreement is otherwise terminated. All reports shall identify credits debited and remaining by type of credit and shall include for each reported debit the USACE ORM ID number and TIP Number/Project Name for the

permit for which the credits were utilized. No credits will be transferred back to the EEP without the prior approval of USACE.

5. Maintenance/Monitoring of Bank Sites

A. Monitoring: NCDOT agrees to perform all necessary work to monitor the Bank Sites (and if appropriate, phases of Bank Sites) and to demonstrate compliance with the Success Criteria established in this NCDOT UMBI and the Site Specific Mitigation Plan(s)/NCDOT UMBI Addendum(s). Success Criteria will typically be based on USACE guidance, and future revisions to the guidance, provided by member agencies of the IRT and those outlined in the Site Specific Mitigation Plans. Monitoring goals and schedules will be developed and submitted for each NCDOT UMBI Addendum to the Umbrella Bank. Monitoring procedures, duration and reporting criteria, and scope are included in more detail in **Appendix ?**.

B. Long-term Management: NCDOT shall implement the long-term management measures described in the Site Specific Mitigation Plan for each Bank Site. At the end of the active monitoring period for each Bank Site, NCDOT reserves the right to transfer the Conservation Easement(s) for the Bank Site(s) to a third party (if available) approved by the Bank Site IRT. Subsequently, this entity shall be responsible for managing the lands in perpetuity.

C. Assurance of Success: NCDOT is responsible for assuring the success of the restoration, creation, enhancement and preservation activities at the Bank Sites, and for the overall operation and management of the Umbrella Bank. If a Bank Site is assigned to a land trust, the trust will be required to assure the success of the Bank Site per this agreement with the mechanism of assurance to be determined by the IRT.

D. Maintenance Provisions: NCDOT agrees to perform all necessary work in accordance with the provisions of the NCDOT UMBI and approved Site Specific Mitigation Plans/NCDOT UMBI Addendum. It is agreed to establish and/or maintain the Bank Sites until (i) credits have been exhausted or banking activity is voluntarily terminated with written notice by NCDOT provided to the Corps and other members of the Umbrella IRT; and (ii) it has been determined and agreed upon by a Bank Site IRT that the debited Bank Site has satisfied all the conditions herein and in the Site Specific Mitigation Plans. Upon receipt of a request by NCDOT to “close-out” a Bank Site, the Corps and Bank Site IRT shall use best efforts to review and comment on the request within 60 days of such submittal. If the conditions described above are met based on Corps and Bank Site IRT review, the Corps shall issue a “close-out” letter to NCDOT for a Bank Site or phase of a Bank Site.

E. Accounting Procedures: NCDOT will track mitigation annually reporting the Umbrella Bank status to the Umbrella IRT, as set forth in the monitoring section of this NCDOT UMBI. Such tracking will include debits related to permitted projects, and any mitigation accrued when success criteria are met as specified in the NCDOT UMBI. A ledger for tracking debits, available credits, and permitted projects will be submitted to the Corps and the Umbrella IRT. NCDOT shall submit the ledger annually. No transfer credits to the EEP will be allowed without prior written approval of the USACE.

F. Annual Reports: NCDOT shall submit to the Corps, for distribution to each member of the Umbrella IRT, an annual report describing the condition of the Umbrella Bank and the condition of the Umbrella Bank in relation to the success criteria of the Site

Specific Mitigation Plans of the Bank Sites. Annual reports will be submitted each year until the termination of this agreement.

G. Contingency and Remedial Plans: Contingency and remedial plans will be developed for each Bank Site. These plans will be included in the Site Specific Mitigation Plans. These plans will establish the groundwork by which NCDOT will proceed to correct deficiencies identified on a given Bank Site, as appropriate. In that remedial actions cannot be determined at this time or at the time of the preparation of the Site Specific Mitigation Plan, NCDOT retains the right to propose and use amended remedial action plans, as appropriate, upon identification of remedial needs in the future And with the approval of the IRT. The Corps shall review the annual reports and monitoring reports, and may at any time, after consultation with NCDOT and the Umbrella IRT, direct NCDOT to take remedial action at a Bank Site. Remedial action required by the Corps shall be designed to achieve the performance criteria specified above. All remedial actions required under this paragraph shall include a practical work schedule and monitoring criteria that will take into account physical and climatic conditions. Remedial actions will follow the contingency/remedial action plans included in the Site Specific Mitigation Plan for that Bank Site, unless more appropriate alternatives are proposed by NCDOT, and approved by the IRT.

IV. Responsibilities of the IRTs

A. Oversight: In coordination with the Corps, the agencies represented on the IRTs agree to provide appropriate oversight in carrying out the provisions of this NCDOT UMBI.

B. Best Efforts: In coordination with the Corps, the agencies represented on the IRTs agree to use their best efforts to review and provide comments on all Pre-application Prospectuses, Site Specific Mitigation Plans, monitoring reports, success criteria, credit review reports, and remedial action plans for the Umbrella Bank and Bank Sites within 60 days.

C. Compliance Inspections: For each Bank Site, the USACE, in coordination with the Bank Site IRTs and NCDOT, shall conduct compliance inspections to verify credits available in the Bank Site and recommend corrective measures (if any) within 60 days of inspection until the terms and conditions of the Site Specific Mitigation Plan/NCDOT UMBI Addendum have been determined to be fully satisfied or until all credits have been debited, whichever is later.

V. Miscellaneous

A. Effective Date: This NCDOT UMBI will become effective on the date of the last signatory's signature. This NCDOT UMBI may be amended or modified with the written approval of all signatory parties.

B. Dispute Resolution: If NCDOT and IRTs disagree on the need for remediation or the methods, or have other disputes pertaining to this NCDOT UMBI, the parties agree to resolve such disputes in accordance with the procedures found in Compensatory Mitigation for Losses of Aquatic Resources, Final Rule (33 CFR Part 325 and 332), April 10, 2008.

C. Participation Termination: Any agency participant may terminate its participation in the Umbrella IRT with notice in writing, through the Corps to all other parties to this agreement. Termination shall be effective fourteen (14) days from placing notices in the United States mail. All remaining parties shall continue to implement and enforce the terms of this NCDOT UMBI and NCDOT UMBI Addenda and Site Specific Mitigation Plans associated with the Bank Site. Except for termination as described above, this agreement may be modified only with the written agreement, through the Corps, of all remaining parties to this agreement at the time of the modification.

D. Delays: Any delay or failure of NCDOT shall not constitute a default if such delay or failure is primarily caused by any act, event, or conditions beyond NCDOT's reasonable control including: (i) lightning, earthquake, fire, landslide, drought, hurricane, storm, flood, or interference by third parties; (ii) condemnation or other taking by any governmental body; (iii) change in applicable law, regulation, rule, ordinance or permit condition; (iv) any order, judgment, action or determination of any federal, state or local court, administrative agency or government body; or (v) the suspension or interruption of any permit, license, consent, authorization or approval.

If the performance of NCDOT is affected by any such event, NCDOT shall give written notice to the Umbrella IRT as soon as is reasonably practicable. If the event affects a Bank Site and occurs before the final availability of all credits, NCDOT shall take remedial action to restore the property to its expected condition prior to such issuance of further credit, in a manner sufficient to provide adequate mitigation to cover credits that were issued prior to the delay. Remedial action shall be taken by NCDOT only to the extent necessary and appropriate, as determined by the Umbrella IRT. Such actions are only necessary if the Bank Site has not received official notification from the Corps that the Bank Site has been closed out.

E. Third Party Beneficiary: No third party shall be deemed a beneficiary and no one except the signatories, their successors and assigns, shall be entitled to seek enforcement.

F. Governing Laws: This NCDOT UMBI shall be governed by and construed in accordance with the laws of the State of North Carolina and the United States of America as appropriate.

G. Amendments: This NCDOT UMBI can be amended in the future to reflect changes in regulatory programs, NCDOT needs, or IRT requirements. These amendments must be mutually agreed upon by NCDOT and Umbrella IRT. Amendments to the NCDOT UMBI must follow the guidelines for amending the NCDOT UMBI attached as Appendix A of this document.

H. Re-evaluation: Due to the anticipated longevity of the Umbrella Bank, NCDOT and Umbrella IRT agree to re-evaluate this NCDOT UMBI and its effectiveness in meeting the mutual objective of the parties of streamlining the NCDOT mitigation process and developing environmentally favorable mitigation Bank Sites. The re-evaluation will be conducted after the process of preparing NCDOT UMBI Addenda/Site Specific Mitigation Plans on several Bank Sites has been completed. Either party can request the re-evaluation to be initiated, but both parties must agree to the appropriateness of the timing of the re-evaluation.

I. Communications/Contacts: All notices and required reports, except as otherwise noted in the NCDOT UMBI, shall be sent to each of the parties (via the Points of Contact) at their respective addresses, provided below.

Sponsor:

North Carolina Department of Transportation
 Project Analysis and Environmental Analysis Branch
 c/o Gregory J. Thorpe, Ph D
 1 South Wilmington Street, Raleigh, N.C. 27699-1548
 (919) 733-3141, FAX (919) 733-9794
 gthorpe@dot.state.nc.us

Corps

Chief, Regulatory Division
 U.S. Army Corps of Engineers
 Ken Jolly
 Wilmington District Regulatory Division

EPA:

Wetlands Regulatory Unit - Region IV
 U.S. Environmental Protection Agency
 c/o

USFWS

Field Supervisor
 U.S. Fish and Wildlife Service
 c/o

NMFS:

Habitat Conservation District
 National Marine Fisheries Service
 c/o

NCNCDENR:

Division of Water Quality
 Wetlands Branch
 c/o

NCNCDENR:

Division of Coastal Management
 c/o

NCNCDENR:

Wildlife Resources Commission
 c/o

NCNCDENR:

Division of Marine Fisheries

c/o

FHWA:
Division Administrator
North Carolina Division
Federal Highways Administration
c/o

IN WITNESS WHEREOF, the parties hereto have executed this Agreement entitled
“Agreement To Establish The NCDOT State-Wide Umbrella Mitigation Bank In North
Carolina”:

Sponsor: North Carolina Department of Transportation

By: _____ **Date:** _____

U.S. Army Corps of Engineers:

By: _____ **Date:** _____

U.S. Environmental Protection Agency:

By: _____ **Date:** _____

U.S. Fish and Wildlife Service:

By: _____ **Date:** _____

National Marine Fisheries Service:

By: _____ **Date:** _____

North Carolina Department of Natural Resources, Division of Water Quality

By: _____ **Date:** _____

North Carolina Department of Natural Resources, Division of Coastal Management

By: _____ **Date:** _____

North Carolina Department of Natural Resources, Wildlife Resources Commission

By: _____ **Date:** _____

North Carolina Department of Natural Resources, Division of Marine Fisheries

By: _____ **Date:** _____

Federal Highway Administration, North Carolina Division

By: _____ **Date:** _____

List of Appendices
Appendix: Bank Site Procedures