

AMENDMENT NO. 2 TO THE
MEMORANDUM OF AGREEMENT
AMONG THE
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES
AND THE
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION
AND THE
UNITED STATES ARMY CORPS OF ENGINEERS, WILMINGTON DISTRICT

The Memorandum of Agreement (MOA) among the North Carolina Department of Environment and Natural Resources (NCDENR), the North Carolina Department of Transportation (NCDOT) and the United States Army Corps of Engineers, Wilmington District (USACE), dated July 22, 2003, is hereby amended as follows:

I. Section VI.B.6 is deleted in its entirety and replaced with the following language:

6. If additional revenue or pressing transportation needs warrant advancement of a project in the TIP schedule, the NCDOT will coordinate with DENR/EEP to determine a schedule, consistent with Section X of this document, for the delivery of required mitigation. The NCDOT can then, at its discretion, set an appropriate advanced letting date based on the availability of mitigation. In the event that EEP cannot satisfy the compensatory mitigation requirements for the advanced NCDOT project, NCDOT may propose to use alternate mitigation options, including, but not limited to, the existing NCDENR in-lieu-fee program or other mitigation providers, to satisfy the compensatory mitigation requirement.

II. The following language shall be added to Section VII.A as subparagraph 4:

4. The Assessment Group identified in this section shall also assume the duties of the Advisory Team identified in Section IV.J of the November 4, 1998 Memorandum of Understanding between the United States Army, Corps of Engineers, Wilmington District, and the North Carolina Department of Environment and Natural Resources, Wetlands Restoration Program.

III. Section X, EEP Milestones, is deleted in its entirety and replaced with the following language:

EEP Milestones

With the exception of the NCDOT projects to be covered during the transition period, the NCDENR will comply with the following performance schedule and timelines prior to offering a mitigation site pursuant to this MOA to satisfy the compensatory mitigation requirements of any USACE permit.

A. Definitions: The following terms found in this section are defined below.

1. Institute(d): A mitigation site has been identified and acquired, and a contract has been issued for the design and implementation of the mitigation project.

2. Construction or Constructed mitigation: A mitigation site has been constructed in its entirety, to include re-vegetation, and an as-built report has been produced and sealed by the design engineer.

3. Unanticipated mitigation: Additional stream and/or wetland impacts that may occur as a result of:

i) A permit modification request made by the NCDOT;

ii) A change in the wetland and/or stream field verified amounts by the USACE;

iii) Increased projected mitigation needs resulting from programmed NCDOT; impact projections that are greater than the annual certified projected amounts; or

iv) A decision or permit requirement made by a State or Federal regulatory or review (resource) agency that occurs later than Concurrence Point 4C in the Merger 01 Process or at an equivalent review point for projects not in the Merger 01 process.

B. Timeframes

For anticipated impacts provided by NCDOT during the following times:

1. Between the date of this amendment and June 30, 2013, the EEP will have mitigation instituted for each applicable USACE permit by the end of the North Carolina state fiscal year (June 30) in which that permit is issued.

Additionally, during this period, EEP will attempt to provide constructed mitigation by the end of the North Carolina state fiscal year in which the USACE permit is issued for seventy five percent (75%) of the Transportation Improvement projects for which EEP has accepted responsibility for providing the necessary compensatory mitigation.

2. Between July 1, 2013 and June 30, 2015, the EEP will have completed construction of mitigation for each applicable USACE permit at the time of permit issuance.

Additionally, during this period, EEP will attempt to provide constructed mitigation by no later than one year in advance of USACE permit issuance for seventy five percent (75%) of the Transportation Improvement projects for which EEP has accepted responsibility for providing the necessary compensatory mitigation.

3. By July 1, 2015, the EEP will have completed the construction of mitigation sites for each applicable USACE permit at least 2 years ahead of the date of permit issuance.

C. Modification of Timeframes

The signatory agencies acknowledge that there may be instances in which the timeframes, as specified above, may not be met due to circumstances beyond EEP's control. In those cases, the USACE may modify these timeframes, on a case-by-case basis, provided a written request to the USACE is made by the EEP at least 6 months in advance of permit issuance.

D. Unanticipated Mitigation Requests.

In the event that unanticipated mitigation is required for any USACE permit and upon EEP acceptance and USACE approval, EEP will satisfy the additional compensatory mitigation requirements using one of the following processes:

1. When credit assets are available that meet MOA conditions and are not otherwise obligated to projects, EEP will use those assets and debit accordingly.

2. When credit assets that meet permit conditions are not available, and upon documentation of appropriate funding from the NCDOT, EEP will plan and institute the required mitigation within one year of its receipt of a USACE permit.

E. Small Impacts: If, within any 8-digit cataloging unit, the cumulative mitigation requirements in any given NC Fiscal Year are less than 1,000 linear feet of stream or 3 acres of wetlands, NC EEP may make a request to the Assessment Group to satisfy the mitigation requirements by use of credits from an adjacent cataloging unit within the same river basin, use of High Quality Preservation, implementation of BMP's identified in a Local Watershed Plan, or other mitigation options as approved by the Assessment Group. The Assessment Group, with the concurrence of its appropriate USACE representative, will, within 30 days of such a proposal, indicate the acceptability of such a proposal. In the event that the proposal is not acceptable, the NC EEP will be obligated to satisfy the mitigation requirements pursuant to the conditions attached to the original permit.

The effective date of this amendment is the date of the last signature below.

DATE:

William G. Ross, Jr.
Secretary, NCDENR

DATE:

Lyndo Tippet
Secretary, NCDOT

DATE:

John E. Pulliam, Jr.
Colonel, US Army
District Commander

AMENDMENT NO. 1 TO THE
MEMORANDUM OF UNDERSTANDING
BETWEEN THE
NORTH CAROLINA DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES,
DIVISION OF WATER QUALITY
AND THE
UNITED STATES ARMY CORPS OF ENGINEERS, WILMINGTON DISTRICT

The Memorandum of Understanding (MOU) between the North Carolina Department of Environment and Natural Resources, Division of Water Quality (NCDENR, DWQ) and the United States Army Corps of Engineers, Wilmington District (USACE), effective November 4, 1998, is hereby amended as follows:

- I. All references to the North Carolina Department of Environment and Natural Resources, Wetland Restoration Program (NC WRP) are hereby deleted and are replaced by reference to the In-Lieu-Fee program administered by the North Carolina Department of Environment and Natural Resources, Ecosystem Enhancement Program (NC EEP-ILF).

- II. **Section IV.H, Timeframes, is deleted in its entirety and replaced with the following:**

Section IV.H. Timeframes: To satisfy the compensatory mitigation requirements of Section 404 permits assumed by NC EEP-ILF, during the first year of this MOU, the NC EEP-ILF agrees to institute projects within 3 years of the date of receipt of payment.

During the second year, projects will be instituted within 2 years of the date of receipt of payment.

Beginning with the third year and continuing to the effective date of this amendment, projects will be instituted within 1 year of the date of receipt of payment.

Beginning with the date of this amendment and continuing for as long as this MOU is in effect, the anniversary date for all mitigation requirements accepted by the NC EEP-ILF pursuant to this MOU will be June 30 of the year in which the mitigation requirement was accepted by NC EEP. Pursuant to this amendment, NC EEP will have until June 30 of the following year to institute mitigation projects in accordance with the terms and conditions of the MOU.

For the purpose of this MOU, the terms "institute" and "instituted" mean that a site has been identified and acquired, and a contract has been issued for the development and implementation of the mitigation project. A construction completion date, not to exceed two years from the date of contract issuance, shall be required for each project. The NC EEP-ILF is committed to providing compensatory mitigation for the majority of stream and wetland impacts in advance of the loss of these aquatic resources.

IV. The following language shall be added to Section IV as paragraph K:

K. Small Impacts: If, within any 8-digit cataloging unit, the cumulative mitigation requirements in any given NC Fiscal Year are less than 1,000 linear feet of stream or 3 acres of wetlands, NC EEP-ILF may make a request to the Assessment Group to satisfy the mitigation requirements by use of credits from an adjacent cataloging unit within the same river basin, use of High Quality Preservation, implementation of BMP's identified in a Local Watershed Plan, or other mitigation options as approved by the Assessment Group. The Assessment Group, with the concurrence of its appropriate USACE representative, will, within 30 days of such a proposal, indicate the acceptability of such a proposal. In the event that the proposal is not acceptable, the NC EEP-ILF will be obligated to satisfy the mitigation requirements pursuant to the conditions attached to the original permit.

The effective date of this Amendment is the date of the last signature below:

DATE:

William G. Ross, Jr.
Secretary
NCDENR

DATE:

John E. Pulliam, Jr.
Colonel, US Army
District Commander