



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION


BEVERLY EAVES PERDUE  
GOVERNOR

EUGENE A. CONTI, JR.  
SECRETARY

January 26, 2010

**MEMORANDUM**

TO: Division Engineers

FROM: R. A. Hancock, PE   
State Construction Engineer

SUBJECT: Use of Borrow Material from Right of Way

In 1989 the Department established a policy for use of borrow material obtained from the Department right of way and used in contract construction projects. This memorandum is intended to provide additional guidance regarding this policy as well as to update the borrow cost information.

Before allowing the use of borrow material from the Department right of way, the effects of excavating this material should be considered. If the use of this material requires additional items of work, such as guardrail or pipe, those items should be at the contractor's expense. A review should be conducted of adjacent properties to ensure that the use of this material will not remove natural sound barriers or create drainage problems. Trees or landscaping which are removed should be replaced as deemed appropriate by the Division. A reclamation plan should be submitted that includes all required components. Exceptions are that a SHPO certification will not be required if borrow is obtained from within the right of way and the environmental assessment may be waived if the site is within the project limits and the plans do not indicate the presence of jurisdictional features. The proposed borrow material should be sampled and tested as deemed appropriate by the Resident Engineer.

A supplemental agreement should be executed in accordance with Article 104-3 of the Standard Specifications. The supplemental agreement description shall include the following language: "By execution of this supplemental agreement, the contractor shall waive his rights to an increase in the Borrow Excavation unit price for underruns in accordance with Subarticle 104-5 of the Specifications if specifically created by the utilization of the material generated from the areas detailed herein. Further, the contractor shall have no claim against the Department related to the utilization of this borrow excavation or for the characteristics of the material. The contractor shall make his own determination of the presence of rock and/or other unsuitable material within the referenced areas." The supplemental agreement should include a line item that deducts the estimated quantity of borrow excavation material at the contract unit price and establish a new

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line item at the adjusted price for "Department Owned Borrow". If the contract line item for borrow excavation includes a fuel adjustment, the supplemental agreement borrow excavation line item should also include a fuel adjustment.

Prior to establishing the new borrow excavation unit price, the contractor's planned method of excavating the material should be reviewed. If the material is located directly adjacent to the project and the contractor plans to obtain the material utilizing the same methods and equipment used for the unclassified excavation on the project, the unit price for the "Department Owned Borrow" material shall be the lesser of the contract unit price for unclassified excavation or the contract price for borrow excavation minus \$0.75 per cubic yard.

If the borrow material originates from Department owned properties off the project, the new price shall be the contract unit price for borrow excavation minus \$0.75 per cubic yard.

When calculating final earthwork quantities, if the area(s) used for "Department Owned Borrow" are included in the measurements for Unclassified Excavation, a deduction must be made to the Unclassified Excavation.

If you have any questions, please contact me at (919) 733-2210.

cc: J. G. Nance, PE  
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Resident Engineers  
Roadway Construction Engineers  
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