



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

JAMES B. HUNT JR.  
GOVERNOR

P.O. BOX 25201, RALEIGH, N.C. 27611-5201

GARLAND B. GARRETT JR.  
SECRETARY

August 21, 1997

John Hefner  
U.S. Fish and Wildlife Service  
PO Box 33726  
Raleigh, NC 27636-3726

David Cox  
N.C. Wildlife Resources Commission  
1142 Interstate-85 Service Road  
Creedmoor, NC 27522

Merrill Lynch  
The Nature Conservancy  
4011 University Drive, Suite 201  
Durham, NC 27707

In Turn

Gentlemen:

Subject: Memorandum of Understanding, Company Swamp Wetland Mitigation Bank

As agreed during the Company Swamp conference held at NCDOT on July 2, 1997, it has become necessary to revise the Memorandum of Understanding for Company Swamp.

The Company Swamp Wetland Mitigation Bank was a pioneering effort in which the agencies cooperated to bring about a common goal. The Memorandum of Understanding (MOU) was originally signed in 1985 by the three agencies involved; the Fish and Wildlife Service, the N.C. Wildlife Resources Commission, and the N.C. Nature Conservancy. Since that time, the bank has served well as an appropriate means of mitigating specific highway impacts to wetlands.



However, with the passage of time, certain changes to the Memorandum of Understanding are needed to accommodate the changing status of mitigation science, and to insure prompt and accurate recordkeeping for project debits.

Accordingly, the attached conference notes and the revised Memorandum of Understanding are forwarded for your agency's action and signatures. Please review the Memorandum of Understanding, obtain the appropriate signatures, and mail to the next addressee. Please have the appropriate authority sign all four original copies, so that each agency and NCDOT will have an original signed document for file. We ask that the last addressee to sign, please return all MOU copies to NCDOT, attention Dr. Charles Bruton, Planning & Environmental Branch, NCDOT, PO Box 25201, Raleigh, NC 27611. NCDOT will then sign the MOU's and forward an original copy to each agency. The Corps of Engineers will be provided a reproduced copy for their files.

Sincerely,

A handwritten signature in cursive script, reading "H. Franklin Vick". The signature is written in dark ink and is positioned above the typed name.

H. Franklin Vick, P.E. , Manager  
Planning and Environmental Branch

HFV/dp

cc: Mr. Mike Bell, Corps of Engineers

Company Swamp Conference Notes  
July 2, 1997

Introduction

- Background and history of Company Swamp Mitigation Bank
- Discussed the roles of the agencies involved in the MOU

Memorandum of Understanding (MOU)

- Began the discussion by going over the general provisions of the MOU
- General Provision 1: No changes were made
- General Provision 2: USFWS not WRC will be managing Company Swamp. All references to WRC will be replaced with USFWS.
- General Provision 3: All parties (NCDOT, USFWS, NCWRC, NC Nature Conservancy) agreed to eliminate the HEP analysis to determine debits to the bank. This analysis was never implemented and would require extensive training and the establishment of a specific team in order to conduct such an analysis. Therefore, General Provision 3 now will read: "The parties of the MOU will use the EPA ratio of 10:1 for any impacts over five (5) acres when debiting from Company Swamp. For projects less than five (5) acres, mitigation will be on an acre-for-acre basis."
- General Provision 4: Because the interagency review team has decided to drop the HEP analysis, this provision will also be dropped from the MOU.
- General Provision 5: All parties agreed to add to this provision so that it will now read ".....on-site mitigation or acceptable off-site mitigation alternatives."
- General Provision 6: All parties agreed to drop the last sentence of this provision that read "Also, wildlife losses will be offset only by wildlife credits and fisheries losses will be offset only by fisheries credits." No other changes were made to this provision.
- General Provision 7: No changes were made.
- General Provision 8: No changes were made.
- General Provision 9: The last sentence of this provision was changed from reading "An annual summary of credits and debits...." to reading "A summary of the credits and debits will be prepared by the USFWS and will be provided to each party every three (3) years or upon request."
- General Provision 10: This provision was changed to read "The interagency review team will meet again in the year 2002 to review the memorandum of understanding.
- General Provision 11: No changes were made.
- General Provision 12: No changes were made.

## Credits Remaining

- Discussions were led by the NCDOT which had provided an accounting of Company Swamp for the review team. The USFWS had not circulated their annual debit balance sheet and therefore the NCDOT had taken the responsibility of updating the accounting of Company Swamp. A meeting has been scheduled with the COE to verify the accounting at Company Swamp.
- No further discussion was necessary at this point.

## Future Use of Company Swamp Bank for Mitigation

- Discussion took place that emphasized that Company Swamp was designated as bank for impacts to bottomland hardwood habitats and was confined to the Roanoke River Basin.
- All the parties agreed to this and do realize that the permitting agencies may not always agree as we have on the above issue.

## Other

- Merrill Lynch of the NC Nature Conservancy brought it to the groups attention that when the property was bought and the credits were established that there was never a survey done of the property at that time. Now a survey has been completed and a copy was given to the NCWRC and shows that the Company Swamp is actually 1,501 acres in size rather than 1,436 acres. A change in the amount of credits at Company Swamp could potentially occur, if the parties of the MOU pursued the matter.

## Attendees:

Dr. Charles Bruton	NCDOT	Kevin Moody	USFWS
Dennis Pipkin	NCDOT	John Hefner	USFWS
Tanner Holland	NCDOT	Mike Bell	USCOE
Deborah Tyrrell	NCDOT	David Cox	NCWRC
Merrill Lynch	NC Nature Conservancy		

MEMORANDUM OF UNDERSTANDING

BETWEEN

NORTH CAROLINA WILDLIFE RESOURCES COMMISSION,  
NORTH CAROLINA DEPARTMENT OF TRANSPORTATION,  
NORTH CAROLINA NATURE CONSERVANCY, AND  
U.S. FISH AND WILDLIFE SERVICE

THIS AGREEMENT is made and entered into on the date hereinbelow last written, by and between the state of North Carolina, acting by and through the Wildlife Resources Commission (WRC) and the Department of Transportation (NCDOT); the United States of America, acting through the U.S. Department of the Interior, Fish and Wildlife Service (USFWS); and the North Carolina Nature Conservancy (NCNC).

WHEREAS, the USFWS is authorized to enter into agreements with the State of North Carolina in accordance with the provisions of the Fish and Wildlife Coordination Act, 16 U.S.C. Sections 661 et seq.; and

WHEREAS, under existing provisions of law the WRC and NCDOT are authorized to enter into agreements with the FWS; and

WHEREAS, the purpose of this Memorandum of Understanding is to establish a Mitigation Bank for mitigating unavoidable fish and wildlife habitat losses associated with future NCDOT projects in bottomland hardwood wetlands; and

WHEREAS, the Company Swamp Tract within the Roanoke River Basin has been identified by WRC and NCNC as one of the best bottomland hardwood sites remaining in North Carolina, in imminent danger of being clearcut and converted to forestry monoculture, and of top priority for protection from development;

NOW, THEREFORE, it is mutually agreed among the four parties that the following general provisions are adopted and will be implemented upon acquisition of the Company Swamp Tract.

General Provisions

1. The term of the agreement shall be for a period of thirty (30) years. The agreement shall be automatically renewed a maximum of two (2) times unless a party hereunto, upon six (6) months written notice, advises the other parties of its intent to terminate the agreement.
2. The USFWS, Master Plan of the Roanoke River Wildlife Refuge, will manage the mitigation bank site in perpetuity. A management plan identifying initial and long-range habitat improvement measures featuring nongame and old-growth timber values will be developed by the USFWS and presented to all parties for concurrence,

and implemented by USFWS. When finalized, the management plan will be attached to this MOU as Appendix A. Acquisition and initial management costs will be paid by the project sponsor, NCDOT.

3. The parties to the MOU will use the EPA ratio of 10:1 for any impacts over five (5) acres when debiting from Company Swamp. For projects less than five (5) acres, mitigation will be on an acre-for-acre basis.
4. Mitigation from the bank will be used only to offset unavoidable impacts on fish and wildlife when the applicant can demonstrate to the satisfaction of all parties to the MOU that there are no available or practical onsite or acceptable off-site mitigation alternatives.
5. The mitigation bank will be used for mitigating unavoidable impacts associated with future NCDOT projects occurring in North Carolina on bottomland hardwood wetland habitat types. For the purposes of this agreement, bottomland hardwood wetlands are defined as follows: Palustrine forested broad-leaved deciduous/needle-leaved deciduous/needle-leaved evergreen semipermanently or seasonally or temporarily flooded wetlands.
6. The mitigation bank will not be used to offset any project impacts on Federally-listed endangered species.
7. If future projects requiring mitigation occur within the mitigation bank site and the bank is to be debited for such projects, then the debits will be doubled.
8. The USFWS will provide data sheets for each credit or debit transaction to all parties to the MOU for signature concurrence. No credits or debits can be applied until all parties concur with the FWS data sheet analysis. Such concurrence, substantiations of reasons for nonconcurrence, or requests for additional review time must be forwarded to the Raleigh office of USFWS within 30 working days after receipt of the data sheet. If no response from a party is received within this time frame, it will be deemed to indicated concurrence by that party. Copies of signed transaction data sheets will be held as a permanent record by USFWS and NCDOT. A summary of the credits and debits will be prepared by the USFWS and will be provided to each party every three (3) years or upon request.
9. The interagency review team will meet again in the year 2002 to review the memorandum of understanding.
10. This MOU does not eliminate the applicant's or agency's responsibilities under all applicable Federal, State and local laws and/or regulations.
11. Amendment or modification of the MOU may be proposed at any time, but will not be adopted unless agreed to by all parties. If proposed revisions are not agreed to within one (1) year after submission, then the party proposing the revision may elect to terminate its participation in this agreement at the end of such one year period.

IN WITNESS THEREOF, the parties have caused this agreement to be executed on the date herinbelow written:

\_\_\_\_\_  
Executive Director  
N. C. Wildlife Resources Commission

Date

\_\_\_\_\_  
Secretary  
N. C. Department of Transportation

Date

\_\_\_\_\_  
Director  
North Carolina Nature Conservancy

Date

\_\_\_\_\_  
Regional Director  
U. S. Fish and Wildlife Service

Date