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NC ECOSYSTEM
ENHANCEMENT PROGRAM

MEMORANDUM OF UNDERSTANDING
between the
U.S. ARMY CORPS OF ENGINEERS,
STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION,
and the
UNITED STATES FOREST SERVICE
for the
DISPOSITION AND MANAGEMENT OF THE CROATAN WETLAND MITIGATION BANK
CRAVEN COUNTY, NORTH CAROLINA
Agreement No. 02-MU-11081100-034

The purpose of this Memorandum is to establish and record agreed-upon policies and procedures between the State of North Carolina, Department of Transportation (hereinafter the "Department of Transportation"), and the U.S. Department of Agriculture, U.S. Forest Service (hereinafter the "Forest Service") to govern the implementation, monitoring and management of the Croatan Wetland Mitigation Bank (CWMB) located in Craven County, North Carolina upon final donation of the land to the United States of America, Forest Service. The U.S. Army Corps of Engineers, Wilmington District (hereinafter the "Corps of Engineers"), enters into this agreement in its oversight role concerning the CWMB. The Department of Transportation, in fulfilling its public service mission of roadway and transportation construction, has acquired and developed the CWMB in accordance with a Mitigation Banking Instrument (MBI) executed by the Department of Transportation, U.S. Army Corps of Engineers and other regulatory and resource agencies, to provide compensatory mitigation for unavoidable wetland impacts on Department of Transportation projects authorized by permits issued by the Corps of Engineers. This 4,035 acre tract was identified as suitable for development as a wetland mitigation bank and will be developed in accordance with the MBI and the Mitigation Plan (hereinafter the "Plan"), attached to and made part of this agreement.

Pursuant to the MBI, the Department of Transportation is responsible for implementing the Plan, including planning, construction, monitoring, performing any necessary remedial activity, and ensuring the project meets success criteria specified in the Plan.

The Forest Service, as the recipient of the CWMB, and in fulfilling the Natural Resource Agenda for the 21st Century for watershed health and restoration, will manage the site as a wetlands mitigation tract for impacts to wetlands and waters as outlined in the CWMB Plan. To the extent allowed under federal law, the Forest Service will hold the tract in perpetuity as part of the Croatan National Forest.

This agreement is intended to implement and facilitate achievement of the plan, establish the responsibility of each party and provide for the long-term management objectives of the tract and will be subject to the following overall policies:

1. The Department of Transportation and the Forest Service will cooperatively plan the development, use and management of the CWMB as they relate to wetlands resources, consistent with the MBI and Plan. Such cooperative planning will begin with the approval of

the final Mitigation Plan and continue through the implementation, monitoring and land management stages. This planning will be directed toward conveyance of the CWMB property to the Forest Service from the Department of Transportation for inclusion in the Croatan National Forest and managed under the Croatan National Forest Land and Resources Management Plan (hereinafter the "Forest Plan").

2. Long-term management of the CWMB will include land uses and practices that are consistent with the mitigation objectives of wetland restoration, enhancement and preservation incorporating restoration of natural vegetation community structure. This includes, but is not limited to, the protection of the East Prong Brice Creek watershed; restoring hydrologic function and sustaining aquatic systems; restoration, enhancement, and preservation of the natural wetlands communities (including hardwood/cypress wetlands); providing Red Cockaded Woodpecker habitat linkage; enhancing black bear habitat; providing un-fragmented hardwood wetlands for interior Neo-tropical migratory bird habitat and restoring hardwoods on suitable sites.

3. The Forest Service will take the necessary steps to designate the CWMB property under Management Area 7 and an appropriate management prescription as defined in the Forest Plan as developed in accordance with the National Forest Management Act of 1976 (P.L. 94-579, 90 Stat. 2743). This designation will specifically outline the long-term management practices that are compatible with the mitigation objectives of wetland restoration, enhancement and preservation.

Typical objectives in the prescription would include actions that would not change the overall characteristic of the wetlands in accordance with the mitigation plan. This would include, but is not limited to the following:

- Prohibit direct and indirect alteration of natural hydrology.
- Prohibit inhibiting water flow of existing canals and ditches as described in the mitigation plan.
- Allow for the active management of red cockaded woodpecker (RCW) territories in accordance with the RCW Recovery Plan (1992).
- Manage lands as not suited for timber production and as restricted by the mitigation plan.
- Allow removal of hazard trees only for the purpose of public safety.
- Prohibit the harvesting and management of pine straw for commercial and residential use.
- Prohibit the construction of new roads, mountain bike and horse trails.

4. Management of land and development of resources will be phased in according to the following schedule:

- a. The fee simple title to the CWMB property shall be transferred to the United States of America within one year of the of the Forest Service's consent to grant the Department of Transportation a Public Road Easement for the construction, operation and maintenance of the U.S. 70. Such title shall be free from all encumbrances with exception to a deed reservation that allows the Department of Transportation to implement and monitor the restoration of the wetlands including performing any necessary remedial activity to ensure success criteria as specified in the Plan.
- b. The Department of Transportation will transfer title in accordance with the regulations contained 36 CFR 254, Forest Service Manual 5400 and the Uniform Appraisal Standards For Federal Land Acquisitions. All expenses to transfer lands will be born by the Department of Transportation.
- c. Upon final transfer of title, the Department of Transportation shall have full authority under the deed reservation [as noted in section 4(a)] to implement the restoration of the wetlands. During this period, the Forest Service will not initiate management activities prescribed under the Forest Plan, notwithstanding those activities necessary for the protection of the site for administrative, fire and access needs. The implementation phase of the project is expected to be completed by the fall of 2002.
- d. During the monitoring phase of the project, projected to begin in the spring of 2002, the Forest Service will work with the Department of Transportation to move the CWMB toward the reference conditions contained in the Forest Plan. Any proposed management activities shall not interfere with the implementation and monitoring of the CWMB and shall have full approval of the Department of Transportation and Corps of Engineers before implementation.
- e. During the implementation and monitoring phases of the project, the Department of Transportation will hold annual meetings with the Forest Service regarding the status of the work being conducted. This will ensure a proper transition and provide the necessary information for long-term management and maintenance of the CWMB.
- f. Upon final certification of the CWMB by the Corps of Engineers, the CWMB will be fully managed in accordance with the Forest and Mitigation Plans.

5. The Department of Transportation will be responsible for the implementation and monitoring of the CWMB in accordance with the mitigation plan. All restoration and monitoring costs are the responsibility of the Department of Transportation.

6. During the restoration and monitoring period, the Department of Transportation will take all reasonable precautions to prevent and suppress forest fires on and prevent any unnecessary damage to lands and resources associated with the project implementation and to this end will collaborate with the Forest Service in formulation of fire prevention and control plans and programs, location of access roads and relocation of transportation facilities, land clearing standards, and other matters essential to the protection of resources and conservation of wetlands.

7. Changes within the scope of this instrument shall be made by a modification executed by all the parties to this agreement.

8. Any information furnished to the Forest Service under this instrument is subject to the Freedom of Information Act (5 U.S.C. 552).

9. This instrument in no way restricts the Department of Transportation, Corps of Engineers or the Forest Service from participating in similar activities with other public or private agencies, organizations, and individuals.

10. The principal contacts for this instrument are:

- U. S. Forest Service: Lauren Hillman
District Ranger
Croatan Ranger District
141 East Fisher Avenue
New Bern, North Carolina 28560
(252) 638-5628

- North Carolina
Department of Transportation: Bruce O. Ellis
Bio-Team Leader
NC Department of Transportation
Project Development and Environmental Analysis
1548 Mail Service Center
Raleigh, NC 27699-1548
(919) 733-1203

- U.S. Army Corps of Engineers: Michael F. Bell
Project Manager
Washington Regulatory Field Office
Post Office Box 1000
Washington, North Carolina 27889-1000
(252) 975-1616, Ext.26

11. This instrument is neither a fiscal nor a funds obligation document. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this instrument will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This instrument does not provide such authority. Specifically, this instrument does not establish authority for noncompetitive award to the cooperator of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.

12. Nothing in this instrument shall affect the rights and obligations of either the Department of Transportation or the Corps of Engineers as set forth in the MBI. To the extent any provision of this document is inconsistent with the MBI, the MBI controls.

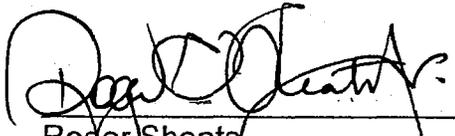
13. This instrument is executed as of the date of last signature and shall be reviewed by the parties every five years. Modifications within the scope of the instrument can be made by mutual consent of the parties, by the issuance of a written modification, signed and dated by all parties, prior to any changes being performed.

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding as of the last written date below:



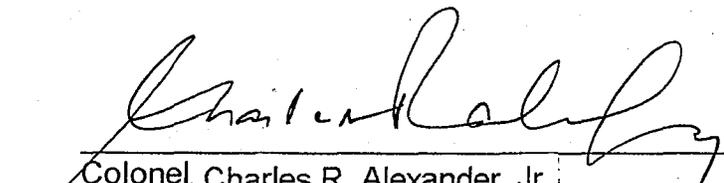
JOHN F. RAMEY
Forest Supervisor
National Forests In North Carolina

7/1/02
Date



Roger Sheats
Deputy Secretary for Environment, Planning
and Local Government Affairs
North Carolina Department of Transportation

9/5/02
Date



Colonel Charles R. Alexander, Jr.
District Engineer, Wilmington District Regulatory Division
United States Army Corps of Engineers

3/21/02
Date