



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1890
WILMINGTON, NORTH CAROLINA 28402-1890

July 3, 2007

Regulatory Division

Action ID 1993-00570, US 1 Improvements, Moore/Lee Counties, North Carolina, State Project Number 8.T560302, TIP No. R-210A.

Dr. Gregory J. Thorpe, PhD, Manager
Project Development and Environmental Analysis Branch
North Carolina Department of Transportation
1548 Mail Service Center
Raleigh, North Carolina 27699-1548

Dear Dr. Thorpe:

This letter is a follow up to a permit compliance inspection conducted by Mr. Richard K. Spencer on 17 May 2006, at the above referenced highway improvement project. During the inspection of the mitigation site at R-210C sites 4&5, centerline station 28+75 through 31+50, we observed that the North Carolina Department of Transportation (NCDOT) had constructed two "special swales with rip-rap berms" impacting the mitigation site. Because of the construction of these structures within the mitigation site, NCDOT is in violation of the above referenced project Department of the Army Permit, Special Conditions Number 2.a.ii, 2.b.iv, 2.b.viii, 13, 18 and 19. It is our responsibility to enforce the conditions of the Clean Water Act Department of the Army Permit.

A review of Wilmington District records indicates that these activities have not been authorized by the U.S. Army Corps of Engineers. The identified unauthorized work within the mitigation site consists of mechanized grading and the deposition of approximately 30 cubic yards of class 3 rip-rap for the construction of two "special swales," impacting approximately 0.03 acres of mitigation site, which included wetlands and stream channel. Accordingly, we request that you cease and desist from further unauthorized activities on this project.

Special Condition 2.b.viii specifically states that "The permittee and/or current and subsequent property owners shall maintain the mitigation site in its natural condition, as altered by work in the mitigation plan, in perpetuity. Prohibited activities within the mitigation site specifically include, but are not limited to: the construction or placement of roads, walkways, buildings, signs, or structures of any kind (i.e., billboards, interior fences, etc.); filling, grading, excavation, leveling, or any other earth moving activity or activity that may alter the drainage patterns on the property; the cutting, mowing, destruction, removal, or other damage of any vegetation; disposal or storage of any debris, trash, garbage, or other waste material; except as may be authorized by the mitigation plans, or subsequent modifications that are approved by the Corps of Engineers. In addition, the permittee shall take no action, whether on or off the

mitigation property, which will adversely impact the wetlands or streams on the mitigation property, except as specifically authorized by this permit, or subsequent modifications that are approved by the Corps of Engineers, Wilmington District.” Furthermore, Special Condition 2.b.iv. stipulates that a 50 foot wide vegetated buffer on the relocated channel would be established, which is also a part of the mitigation site. Because of the unauthorized work, the entire mitigation site is no longer considered a viable mitigation site, violating the requirement of Special Condition 2.a.ii requiring 980 linear feet of stream mitigation. These structures will also result in the dis-equilibrium of hydrology in the wetlands, streambeds and banks and the impairment of the surface water flow into and out of the wetlands and stream channel violating Special Conditions 13 and 18, respectively.

Finally, NCDOT was required, by Special Condition 19, to maintain the authorized work in good condition and in conformance with the terms and conditions of the aforementioned permit. The permittee is not relieved of this requirement even if he abandons the permitted activity without transferring it to a third party.

Therefore, due to the nature of the violation and considering that the property in question was a mitigation site established to offset the impacts of the highway improvement project, the following corrective actions should be initiated by NCDOT immediately upon receipt of this letter in order to bring the project into compliance.

1. A scope of work for the removal of the unauthorized structures and complete restoration of the mitigation site shall be submitted to this office within 30 days of receipt of this letter. The scope of work shall include a plan indicating the methods to be used to remove the rip-rap portions of the structure and restoration of pre-disturbed contours. The scope of work shall include a plan for controlling sediment and erosion within the work area so that there is not an appreciable release of sediment to the down gradient receiving waters and that any discharge of dredged material will meet the State of North Carolina’s effluent standards. The scope of work shall include the restoration of vegetation that was present before the unauthorized construction and a work schedule for completion of each phase of the work. The work schedule shall also include the timing for the removal of all erosion and sediment control measure and a five year monitoring plan to commence upon completion of the restoration project. The scope of work shall also include an as-built plan of the restoration, including wetlands and buffer. The stream channel survey should match the as-built channel survey plan for the original mitigation site as required by Special Condition 2.b.ii. No work shall be undertaken until the Corps of Engineers has approved the restoration scope of work and schedule.
2. All sediment and erosion control measures placed in the mitigation site shall be removed, and natural grades in those areas shall be restored prior to project completion.
3. Mitigation for 100 linear feet of disturbed stream channel and 0.03 acres of disturbed wetlands that have occurred as a result of the unauthorized activity shall be provided by payment to the North Carolina Ecosystem Enhancement Program

(NCEEP) in an amount determined by the NCEEP sufficient to perform 200 linear feet of warm water stream and 0.06 acres of riparian wetlands mitigation in the Cape Fear River Basin. The NCDOT shall, within 30 days of the issue date of this letter, certify that sufficient funds have been provided to EEP to complete the required mitigation.

Your prompt attention and response to the issues identified in this letter is required and we request that you confirm your intentions regarding this matter within 10 days after receiving this letter. If after receiving this cease and desist order, you fail to act on the matters as prescribed above to resolve the non-compliance issue, I may seek immediate legal action. Additionally, administrative penalties are being considered against you for your failure to comply with the conditions of the issued Department of the Army permit.

Should you have any questions or wish to discuss this matter further, please contact Richard K. Spencer at the Wilmington Field Office, Regulatory Division, at telephone (910) 251-4172.

Sincerely,

S. Kenneth Jolly
Chief, Regulatory Division

Copies furnished:

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