



North Carolina Department of Environment and Natural Resources

Pat McCrory  
Governor

John E. Skvarla, III  
Secretary

January 1, 2014

**MEMORANDUM**

TO: Environmental Review Commission  
The Honorable Brent Jackson, Chair  
The Honorable Ruth Samuelson, Co-Chair  
The Honorable Mike Hager, Co-Chair

FROM: Neal Robbins, Director of Legislative Affairs

SUBJECT: Petition to allow for greater flexibility and opportunity to perform stream and wetlands mitigation

DATE: January 31, 2014

Pursuant to S.L 2013-265 Section 22.1 and 22.2, the Department of Environment and Natural Resources and the Department of Transportation shall jointly petition the Wilmington District of the United States Army Corps of Engineers (Wilmington District) to allow for greater flexibility and opportunity to perform stream and wetlands mitigation outside of the eight-digit Hydrologic Unit Code (HUC) where development will occur and submit a report to the Environmental Review Commission. Please consider the attached as the formal submission of this report.

If you have any questions or need additional information, please contact me by phone at (919) 707-8618 or via e-mail at [neal.robbins@ncdenr.gov](mailto:neal.robbins@ncdenr.gov).

cc: Mitch Gillespie, Assistant Secretary for Environment, NCDENR  
Tom Reeder, Director, DWR, NCDENR

The North Carolina Farm Act of 2013 (SL 2013-265) was signed into law by Governor Pat McCrory on July 17, 2013 and became effective August 1, 2013. As required in Part XVII, Section 22.1 of the Act, the North Carolina Department of Environment and Natural Resources and the North Carolina Department of Transportation submitted a joint petition to the Wilmington District of the United States Army Corps of Engineers (Wilmington District) to allow for greater flexibility and opportunity to perform stream and wetlands mitigation outside of the eight-digit Hydrologic Unit Code (HUC) where development will occur. A formal petition was signed by Secretary Tony Tata and Secretary John Skvarla and transmitted to Col. Steven A. Baker, Commander of the Wilmington District on January 13, 2014. A copy of this letter is attached hereto.

Several months prior to this written petition, staff of the Division of Water Resources verbally communicated the passage of the Act and its requirements, so that the Corps could proceed with consideration of this request. To date, the Corps has not provided a written response to the formal petition; however, we do have initial feedback based on previous verbal discussion with Scott McLendon, Chief of the Wilmington District, Regulatory Section. Mr. McLendon indicated that the Wilmington District already provides sufficient flexibility when appropriate to ensure that a permittee has access to mitigation opportunities which will reasonably address mitigation needs warranted by project impacts. For example, on a case-by-case basis, if no mitigation sites are available within the hydrologic unit code (HUC) where an impact occurs, mitigation may potentially be allowed outside of the HUC, albeit at a higher ratio. Mr. McLendon added that mitigation outside of the HUC would not likely be considered merely due to cost considerations, as the Corps is required to balance the environmental impacts to public resources with the needs of the applicant.

Col. Steven A. Baker  
Commander  
Wilmington District  
U.S. Army Corps of Engineers  
69 Darlington Avenue  
Wilmington, NC 28403

January 13, 2014

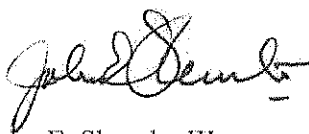
**Re: Compensatory Mitigation Bank Service Areas**

Dear Col. Baker:

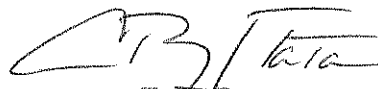
The North Carolina Farm Act of 2013 (SL 2013-265) was signed into law by Governor Pat McCrory on July 17, 2013 and became effective August 1, 2013.

Part XVII, Section 22.1 of the Act, states that the North Carolina Department of Environment and Natural Resources and the North Carolina Department of Transportation shall jointly petition the Wilmington District of the United States Army Corps of Engineers (Wilmington District) to allow for greater flexibility and opportunity to perform stream and wetlands mitigation outside of the eight-digit Hydrologic Unit Code (HUC) where development will occur. The Departments hereby respectfully submit this petition seeking to allow greater flexibility and opportunity for mitigation for both public and private development. The Departments also request that the Wilmington District review the flexibility and opportunities for mitigation allowed by other Districts of the United States Army Corps of Engineers when considering this request.

Respectfully Submitted,



John E. Skvarla, III  
NCDENR, Secretary



Tony Tata  
NCDOT, Secretary