



DEPARTMENT OF THE NAVY

COMMANDER
NAVY REGION, MID-ATLANTIC
1510 GILBERT ST.
NORFOLK, VA 23511-2737

IN REPLY REFER TO:
5090
N453/22/4898
03 DEC 2004

COL Yvonne J. Prettyman-Beck, CE, U.S. Army
Norfolk District, Army Corps of Engineers
Fort Norfolk, 803 Front Street
Norfolk, VA 23510-1096

Dear Colonel Prettyman-Beck:

SUBJECT: ARMY CORPS OF ENGINEERS PROJECT FILE NUMBER 03-R0366-18

This letter transmits the final Resolution Agreement for the unauthorized fill of 2.17 acres of wetlands aboard Naval Air Station (NAS) Oceana. The Agreement includes necessary site maps and wetland plans requested by Mr. Steve Martin, Regulatory Branch, Army Corps of Engineers (ACOE), Norfolk District. Your signature is requested to finalize this document in order that the Navy can immediately proceed with agreed upon creation of wetlands on NAS Oceana.

The Navy anticipates that the construction of four acres of forested wetland habitat will begin this winter with anticipated completion in 2005. An additional ten acres of wetland habitat, including the three-acres located on the dry-retention pond, will be designated for long-term preservation under NAS Oceana's Integrated Natural Resources Management Plan (INRMP), and as an electronic file in our Geographic Information System (GIS).

If there are any questions, please contact, Mr. E. Brian Hostetter at (757) 462-8564, extension 391, or Ms. Stephanie McManus at extension 392.

Sincerely,

F. F. AUCREMANNE
Captain, CEC, U.S. Navy
Chief of Staff

Enclosures: 1. Settlement Agreement
2. Wetland Plan
3. Aerial GIS Overview of Proposed Wetland
Mitigation and Preservation Sites
4. Grading and Elevation Plan

Copy to: Virginia Department of Environmental Quality, Tidewater
Regional Office

RESOLUTION AGREEMENT
Between
U.S. ARMY CORPS OF ENGINEERS
NORFOLK DISTRICT
And
COMMANDER, NAVY REGION, MID-ATLANTIC

SUBJECT: ACOE Project File Number 03-R0366-18

AUTHORITY: Section 404 of the Clean Water Act (33 U.S.C. § 1344) and section 10 of the Rivers and Harbor Act (33 U.S.C. § 403).

BACKGROUND:

In early 2003, the Navy, without a permit, filled approximately 2.17 acres of forested wetlands aboard Naval Air Station (NAS) Oceana, located in Virginia Beach, Virginia. The wetlands, situated on the Aeropines Golf Course, were determined by the U.S. Army Corps of Engineers (ACOE), Norfolk District to be within its jurisdiction by reason of adjacency to West Neck Creek, waters of the United States.

A March 21, 2003, site inspection by ACOE concluded that unauthorized wetlands impacts occurred. A Notice of Violation (NOV) was issued to Commanding Officer, NAS Oceana on April 8, 2003. Subsequent correspondence and discussions between ACOE and Navy established grounds for resolving the matter.

RESOLUTION AGREEMENT:

In an October 10, 2003, letter ACOE indicated that it would issue an after-the-fact permit, Nationwide Permit (NWP) 32, to the Navy for its unauthorized work. The permit would be based on two conditions: (1) the Navy will create four acres of wetlands in the existing dry retention pond bordering Aeropines; and (2) the Navy will preserve ten acres of wetlands; three of which will be located in the same dry retention pond and seven of which will be located aboard Dam Neck Annex.

At a November 13, 2003, meeting, Mr. Brian Hostetter, Natural Resources Program Manager, Regional Environmental Group, Mid-Atlantic Region, and Mr. Steven Martin, Regulatory Branch, Norfolk District ACOE, reached consensus on many details pertaining to wetlands creation, including benchmark elevations, conceptual grading, soil testing, and soil amendment.

The ACOE agrees to:

a. Authorize 2.17 acres of wetlands impacts at Aeropines Golf Course.

b. Close its enforcement file in this case, provided Commander, Navy Region, Mid-Atlantic complies with conditions prescribed in this Agreement. If ACOE obtains new information that changes the factual basis for this Agreement (e.g., information demonstrating that the impacts were appreciably greater than outlined above), or if circumstances arise that materially and adversely affect the Navy's performance, then ACOE may terminate the Agreement and take other appropriate action authorized by law or regulation.

The Navy agrees to:

a. Submit to the Norfolk District ACOE, for prior approval, plans and specifications to create and preserve four acres of wetlands and preserve three additional acres of wetlands, all in the dry retention pond at NAS Oceana, to include:

- (1) Specific goals and objectives;
- (2) Maps depicting the location and extent of wetlands creation and preservation areas;
- (3) A conceptual grading plan that specifies current and proposed grades, location of water control structures, and other pertinent data;
- (4) A planting plan;
- (5) Soil preparation and amendments;
- (6) An abatement and control plan for undesirable plant and animal species;
- (7) A construction timetable;
- (8) Contingency plans; and
- (9) A monitoring and long-term management plan to: evaluate hydrology and vegetation at 1-, 2-, 3-, 5-, 7-, and 10-year intervals following completion of all necessary excavating, grading, and filling; and, protect wetlands covered by this Agreement from damage.

b. Perform all necessary excavating, filling, and grading activities within 6 months of the effective date of this Agreement, unless an extension of time is requested and approved at least 30 days before the 6-month period expires.

c. Perform all other work identified in subparagraphs a.(1) through (9) above, within constraints articulated in subparagraph d.(5) below.

d. Designate for indefinite preservation the seven-acre wetlands parcel at NAS Oceana described above and a seven-acre wetlands parcel at Dam Neck Annex, as shown on the attached maps. These parcels are collectively referred to below as "the mitigation areas."

(1) The mitigation areas shall be incorporated into real estate summary maps, Integrated Natural Resources Management Plans, and electronic Geographic Information Systems for NAS Oceana and Dam Neck Annex. Additionally, the Navy Region, Mid-Atlantic site approval process will be amended to prescribe that site approval shall not be given for a project or activity until it has been ascertained that the project or activity will not occur within or adversely affect a mitigation area, except as provided in subparagraph d.(3) below. Finally, Commander, Navy Region, Mid-Atlantic will publish an annual Notice identifying the location of the mitigation areas to all subordinate installations and tenant commands. The Notice will be posted electronically at www.cnrma.navy.mil, under the heading "Instructions."

(2) Designating mitigation areas for preservation under this Agreement does not constitute a restrictive covenant, negative easement, or other similar obligation running with the land, and does not require Navy Region, Mid-Atlantic to expend funds for any activity, e.g., long-term monitoring and management, contrary to subparagraph d.(5) below. In the event real property containing a mitigation area (or any part thereof) is: declared excess; transferred out of Navy custody and control; declared surplus; and, conveyed to a private entity, and if wetlands so conveyed are not preserved in a manner consistent with this Agreement, ACOE Norfolk District may seek replacement mitigation as provided in subparagraph d.(4) below, in the manner and to the extent then provided by statute, regulation, and ACOE policies applicable to federal agencies.

(3) Navy Region, Mid-Atlantic will: use mitigation areas only for purposes authorized or required by law; give advance notice to the Norfolk District of proposed activity or changes in land use reasonably likely to adversely affect the extent, form, or function of wetlands covered by this Agreement; and in such cases apply, as per regulation, for ACOE wetlands permits.

(4) In connection with permitted activity or as a consequence of activity for which a permit should have been obtained, the Norfolk District may seek other and further mitigation, referred to herein as "replacement mitigation," e.g., creation and preservation of other wetlands, purchase of credits from a wetlands mitigation bank, and payment to an in-lieu-fee organization. Replacement mitigation will be determined at that time, in the manner then provided by statute, regulation, and ACOE policies applicable to federal agencies.

(5) Nothing contained in this Agreement shall require or presume authorization or appropriation of funds by Congress or obligation or expenditure of funds by Navy Region, Mid-Atlantic in violation of the Anti-Deficiency Act.

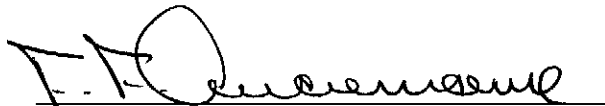
This Agreement takes effect on the date last signed.

SIGNATURES BELOW INDICATE ACCEPTANCE AND AGREEMENT WITH THE TERMS AND CONDITIONS OF THIS RESOLUTION.



YVONNE J. PRETTYMAN-BECK
Colonel, CE, U.S. Army
Commander
Norfolk District
Army Corps of Engineers

Date: 12-20-04



F. F. AUCREMANNE
Captain, CEC, U.S. Navy
Chief of Staff
Navy Region, Mid-Atlantic

Date: 12-8-04