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MEMORANDUM

DATE: March 23, 2009

FROM: Phil May, Carolina Ecosystems, Inc.

TO: David Garrett, P.E. P.G.; Mike Gurley, CMS Landfill; Brad Green, CMS Landfill; Bill Hodges, HHNT; Steve Chapin, USACE; Alan Johnson, NCDWQ

RE: Clean Water Act Section 404/401 Jurisdiction and Permitting Update
Phases 3 and 4 Lateral Expansions
CMS Landfill, Concord NC

The purpose of this memorandum is to provide a brief summary of the regulatory meetings, jurisdictional areas, and proposed permit requirements for the above referenced project.

Previous Work:

A delineation was performed on a portion of the Phase 3 landfill area (Figure 1) in 2005 by ESP Associates. This delineation included the main "saddle" area wetland (WB) in Phase 3 and the stream channel (SB) and associated wetlands (WC) on the recently acquired Furr Tract (eastern portion of the site beyond the current fenceline). The delineation was approved by the Asheville Regulatory Field Office of the US Army Corps of Engineers (USACE) in 2005 (USACE Action ID 200531842). This resulted in a wetland delineation map showing Clean Water Act (CWA) jurisdictional wetlands and streams for a portion of Phase 3, including stream denotations within the man-made ditches in the saddle area.

Current Work:

In order to assess the entire Phase 3 area for potential impacts to wetlands and streams, a full delineation of the Phase 3 and 4 areas was performed in September 2008. A request for jurisdictional determination was submitted to the USACE and NC Division of Water Quality (NCDWQ). Subsequent field meetings were held with Mr. Steve Chapin of the USACE and Mr. Alan Johnson of NCDWQ in February 2009. The results of these meetings are as follows:

Jurisdictional Areas:

- The delineation shown on the attached map has been field verified and can be formalized via submission of a wetland delineation plat to the USACE for signature.
- The ditches shown on the 2005 delineation map as streams were re-evaluated and will be considered linear wetland features in the upcoming permit submittal. The stream feature actually begins at the current fence line along the western boundary of the Furr Tract.
- Wetland features WD and WG are considered isolated and therefore under the sole jurisdiction of the NCDWQ through the state's Isolated and Non-404 Wetland rule. The JD submittal from December will be revised slightly to include an evaluation of significant nexus of wetland WG. A revised JD form is attached to this memo.

- There are no wetlands or streams under the jurisdiction of the CWA above the road crossing in the Phase 4 area. The channel between the sediment basin and the access road is a man-made outfall from the basin. Jurisdiction begins at the outlet of the pipe under the road.

Recommendations:

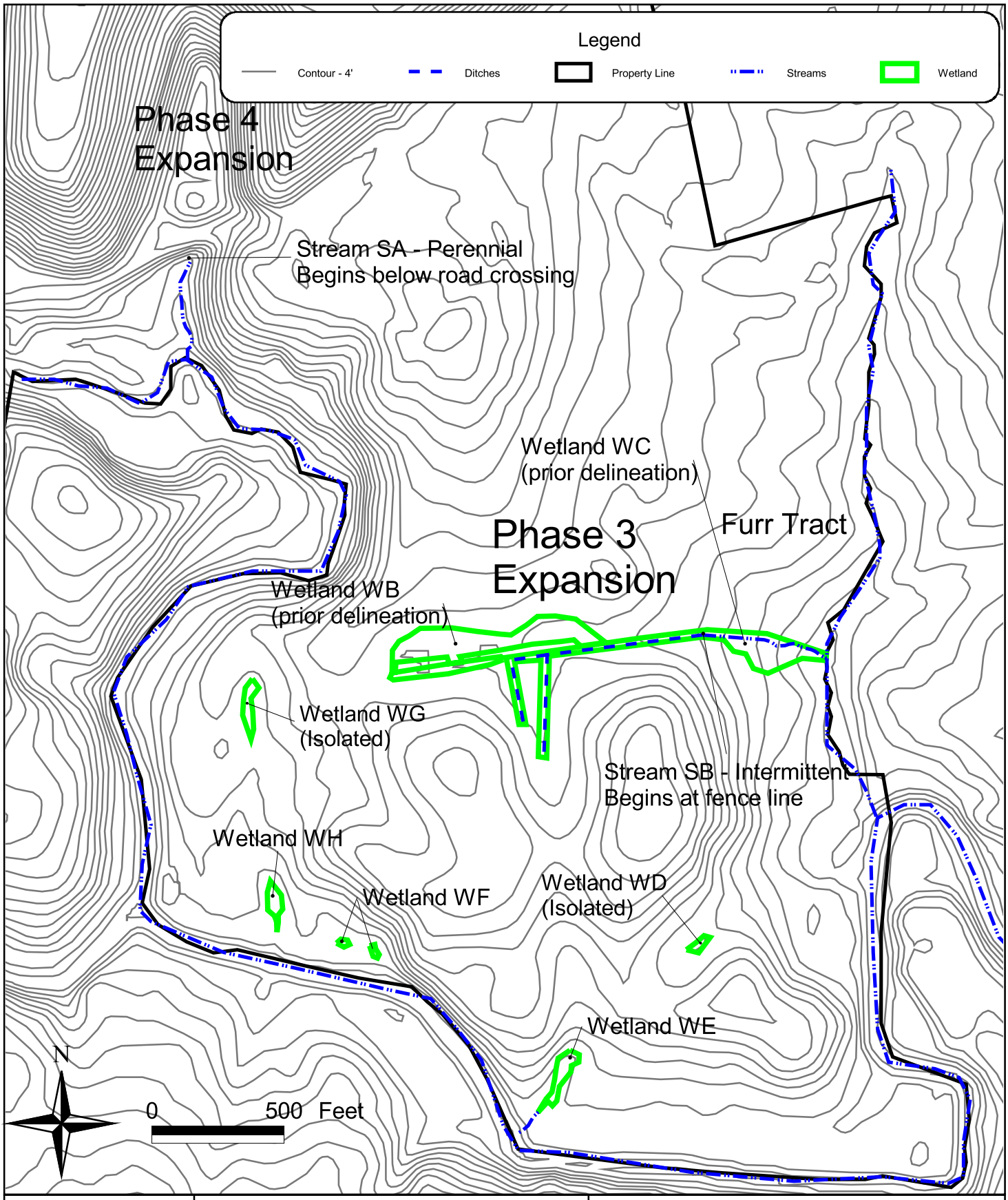
- The clearing and grubbing of the wetland area within the saddle feature is contained within the proposed impact area of the upcoming permit application for Phase 3. If this application is submitted in the near future (by June 2009) as a partial after-the-fact permit, no further action regarding the violation will be pursued.
- It is strongly advised that the sediment basin in Phase 4 be cleaned out and erosion control measures along the access road monitored and replaced/repaired if needed.
- Avoidance of the wetlands located along the flood plain of the Rocky River (WE, WF, WH) and those on the Furr Tract beyond the existing fence line (WC) is highly recommended unless no practical alternative is available.
- The evaluation of the avoidance and minimization of wetland WG should consider the siting of stormwater BMPs and their potential drainage effect on this area.
- Outlets from the stormwater management system should be routed, where possible, to the same drainage areas in order to retain the hydrology of all unimpacted jurisdictional features.

Proposed Permit Schedule and Required Items:

Based on the information summarized above a dual submittal to the USACE and NCDWQ will be required for the Phase 3 Expansion, and no permit application will be required for Phase 4 if work is limited to above the access road. The Phase 3 application will include an Individual Permit application to both agencies and an Isolated/Non-404 Wetland application to NCDWQ. The tentative schedule for this application is latest June 1, 2009, and will require the following information be completed and provided to us by May 1, 2009:

- Electronic files of the 2005 wetland delineation (the areas currently shown are approximate);
- A meeting with CMS staff and engineering designers to discuss site alternatives, stormwater management, and related permitting issues;
- Current adjacent property owner information;
- Coordination with the local municipalities (i.e. Concord) to investigate potential mitigation sites in the area;
- Full set of engineering plans showing the base and final landfill grades, other associated infrastructure, landfill liner and cap details, and stormwater management on the site.

If you have any questions regarding the information in this memo or need additional information, please call me at your convenience at (919) 606-1065 or email me at phil.may@carolinaeco.com. CEI appreciates the opportunity to work with you all on this project.



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Data Sources:
- NCDOT 2007 LIDAR Topo
- 2005 Wetland Delineation Map
- 2008 Wetland Survey Data

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Figure 1: Delineation Map
Phase 3 and 4 Expansion Areas
CMS Landfill
Concord, NC