



## The Umstead Coalition

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*B.W. Wells Association  
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NC Herpetological Society  
NC League Conservation Voters Foundation  
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*NC Native Plant Society  
Orange-Chatham Group Sierra Club  
Raleigh Ski and Outing Club, Inc.  
Rockingham Naturalist's Club  
Friends of Jockey's Ridge  
Wake Audubon Society*

March 12, 2019

### MEMORANDUM

To: Danny Smith, Interim Director, NC Division of Energy, Mineral and Land Resources, NC DEQ

Cc: Mike Regan, Secretary, NC Department of Environmental Quality (NC DEQ)  
Susi H Hamilton, Secretary, NC Department Natural and Cultural Resources (NC NCR)  
Reid Wilson, Deputy Secretary, NC Department Natural and Cultural Resources (NC NCR)  
Dwayne Patterson, Director, NC Division of Parks and Recreation, NC NCR  
Carol Tingley, Deputy Director, NC Division of Parks and Recreation, NC NCR  
Ken Eudy, NC Governor's Advisor  
Bill Holman, North Carolina State Director, The Conservation Fund  
Cassie Gavin, NC Sierra Club  
Kym Hunter, Attorney, Southern Environmental Law Center (SELC)  
Gray Styers, Attorney, Fox Rothschild, LLP  
Hayes Findley, Attorney, Fox Rothschild, LLP

From: Dr. Jean Spooner, Chair, The Umstead Coalition, 919-602-0049, [umsteadcoalition@gmail.com](mailto:umsteadcoalition@gmail.com)  
Dr. William Doucette, Member, The Umstead Coalition

Reference: Mining Permit 92-10 - Modification Dated March 28, 2018 issued to Wake Stone Corporation.

### **Request to reverse permit modification and re-instate Sunset Clause**

We appreciate meeting with you on March 5, 2019 to discuss our objections to the above reference permit modification. Our objective was to further explain the basis for our request dated November 14, 2018 to reverse the permit modification to the Reclamation Condition 5.B. The Umstead Coalition letter was within 30 days of The Umstead Coalition's discovery date (November 6, 2018) that the permit had been changed. There are no on-line records of the permit files.

From our discussion it is our understanding that your office issued the modification based on an e-mail in March 2018 from Wake Stone Corporation indicating a clerical error in the initial May 13 1981 mining permit (and all subsequent permits). Attached to the e-mail from Wake Stone Corporation was a document purportedly issued by the Mining Commission dated April 3, 1981, more than a month before the actual first permit issuance, which describes the permit conditions. DEQ staff may have assumed that the Mining Commission document has precedence and the 1981 permit was in error. However, DEQ acknowledged that an original of that Mining Commission document is not present in the permit file, and not verified.

♥ The Umstead Coalition ♥

Dedicated to preserving the natural integrity of W.B. Umstead State Park and the Richland Creek Corridor

Wake Stone Corporation did not submit a required permit modification request form prior to your issuing the 2018 modification.

Our first position is that the 1981 permit as written has precedence over the purported Mining Commission document dated over a month prior. The permit donation conditions were the result of negotiations over a period from January 27 to May 13, 1981 and are correctly written in the 1981 permit. The Mining Commission document dated a month before permit issuance, if valid, represents only one point in a long negotiation. Please consider the following.

- The original permit application by Wake Stone Corporation was denied by NC Department of Natural Resources and Community Development (now known as DEQ; for convenience, DEQ is used for the remainder below) per the Mining Commission report “Findings of Fact, Conclusions, and Decision” Dated January 27, 1981. This Mining Commission document states that DEQ was correct in the denial of the permit application due to “significant adverse effect on the purposes of the park” and asks for development of adequate buffer zones and donation of the quarry to State for park use as part of its reclamation plan.
- The 1981 Mining Commission “Finding of Facts, Conclusions and Decision” which states with respect to quarry donation to the State for park use: “the Commission requests that counsel for Wake Stone meet with Mr. Daniel Oakley, Assistant Attorney General and Ms. Becky French, Director, Office of Administrative Hearings, to reach an agreement, to be submitted to the commission on the best method to transfer the land.” No original records of such agreement are present in the file beyond the 1981 permit.
- The permit file contains a letter from NC State Parks with comments on a draft of the 1981 permit dated May 11, 2018 which was 2 days before the initial permit was issued.
- The memo from NC Division of Parks and Recreation dated May 11, 1981 (2 days prior to the first permit being signed) illustrates that the first permit was reviewed in great detail and refers to Clause 5B. Based upon the great scrutiny the first signed permit received by the NC Division of Parks and Recreation, DEQ, Wake Stone Corporation, and the public, there is adequate evidence that ALL parties knew that “sooner” was the correct wording in Clause 5B. This letter further demonstrates that State Parks is an “interested party” to the permit.
- A Cover letter addressed to Wake Stone Corporation and signed by Stephen G. Conrad, Director, Land Resources for the May 13, 1981 permit includes: “Please review the permit and notify this office of any objection or question concerning the terms of the permit.” There is no documentation in the file that the May 13, 1981 permit signed by DEQ and Wake Stone Corporation had “any concerns” by Wake Stone Corporation for 5.B.
- Wake Stone Corporation accepted the May 13, 1981 permit without objection to reclamation Condition 5.B and accepted permit renewals May 13, 1981; April 15, 1986; April 1, 1991; February 5, 1992; November 24, 2010; March 30 2011; and December 1, 2017 without objection to Reclamation Condition 5.B.
- The original 1981 Mining Permit and the renewals/modification signed by DEQ and Wake Stone through December 2018 are the OPERATING DOCUMENTS.

Second: Changing the word “sooner” to “later” in Section 5.B. is a SUBSTANTIAL change to the permit. This change eliminates the “Sunset Clause”, the right of the State of North Carolina to exercise its donation option 50 years after mining commenced. This change completely disadvantages William B. Umstead State Park and the State of NC.

Changing the text from “sooner” to “later” renders Section 5.B. meaningless. The plain reading of 5B requires the word “sooner” in order to have any utility/meaning in the permit. Otherwise, why would 5B have been in the permit for 38 years and a reference made to 50 years in the context of all quarryable stone not removed?

Third DEQ failed to follow its own procedures in issuing the modification. There was NO application from Wake Stone Corporation for a Permit Modification submitted for the change from “sooner” to “later.” Further more there was no notification to the affected landowners within 1,000 feet (NC Division of Parks and Recreation for William B. Umstead State Park), 2 private landowner as had occurred with other significant permit changes that affected Umstead State Park (e.g., change in the buffers, as evidence by extensive communications between NC Division of Parks and Recreation and DEQ in the permit file).

The 2018 permit modification in Section 5B of “sooner” to “later” was based upon an unverified document that was put into the permit file by Wake Stone Corporation. A Public Records request failed to show any original of this document. There has been no other due diligence by DEQ that the unverified document that Wake Stone added to the permit file was correct. An email referencing an unverified document that Wake Stone Corporation had put to the file should be considered insufficient grounds to make such a significant change to a permit. An unverified document should NOT override the actual first permit signed almost 1 month later. However, even if the document that Wake Stone Corporation added to the file is found to be correct, it should not take precedent over the permits signed by DEQ and Wake Stone Corporation over 37 years – the **permits are the operating documents.**

Finally, NC State Parks, local governments and the public depended on the 1981 Reclamation Conditions for 37 years before the 2018 DEQ modification. Even if the 1981 permit conditions are in error (which we content were not) the extraordinary length of time upon which these conditions were in effect render such an error inconsequential. The public has expected since the first permit was signed in May of 1981 that the State of NC has the option to exercise that could eliminate the large volume of heavy truck traffic, noise and dust at our most popular entrance to William B. Umstead State Park.

We strongly urge that Clause 5B in the Mining Permit 92-10 be corrected to the words used in the May 13, 1981 permit with the “sooner” word.