

DISPUTES REVIEW BOARD RECOMMENDATION

May 8, 2008

Mr. Danny Tidwell
The HNTB Corporation
5912 Breckenridge Pkwy Ste E
Tampa, FL 33610

Mr. Eric Lesso
Miller Electric Company, Inc.
2251 Rosselle St
Jacksonville, FL 32204

RE: West Florida Intelligent Transportation Systems (ITS) Improvements (Florida's Turnpike) which includes the Veterans Expressway, (SR-589 - Hills. Cty; 14.1 miles), the Suncoast Parkway, (SR-589 - Hillsborough, Pasco and Hernando counties; 41.39 miles), and the Polk Parkway (SR-570 - Polk County; 24.4 miles).

Financial Project No.: 406120-4-52-01

Contract No.: E8H33

Subject: Disputes Review Board hearing regarding the worksite shoulder restoration limits.

Dear Sirs:

The Florida Turnpike Enterprise ("TPK"), the owner, through its consultant, The HNTB Corporation ("HNTB") and the contractor, Miller Electric Company ("MEC"), jointly requested a DRB hearing to define the worksite shoulder restoration limits for which MEC is responsible. The request was specifically limited to the various work areas on the Suncoast Expressway Project only.

The Dispute Review Board ("DRB") Recommendation includes the following sections:

- **Executive Summary**
- **MEC Position & Rebuttal**
- **TPK Position & Rebuttal**
- **DRB Findings of Facts, and**
- **DRB Recommendation**

EXECUTIVE SUMMARY

The Contract included the installation of an ITS system on the Veterans Expressway in Hillsborough County, the Polk County Expressway in Polk County, and the Suncoast Expressway beginning in Hillsborough County, through Pasco County and terminating in Hernando County. No issues were brought to the board relating to construction activities on either the Veterans Expressway or Polk Parkway.

The TPK requested that the DRB rule that a 300 lf limit be required for restoration work at each worksite to include the placement of sod from the edge of shoulder to the area of work performed by MEC.

MEC initially offered to perform restoration efforts 25 lf on each side of a device pole to bring the area back to its original condition, but MEC rescinded its offer in its rebuttal. MEC rebuttal paper states that each worksite area needs to be reviewed and restored to its original condition on a case by case basis.

The following sections "Contractors Position" and "TPK Position" will state each respective position by referencing, copying and paraphrasing their position paper, rebuttal paper and input from the hearing. Should the reader need additional information please see the complete position and rebuttal papers submitted by MEC and the TPK.

MEC POSITION & REBUTTAL

MEC position paper included the following statements:

Miller Electric Company disagrees with the Department's position on the 300' (LF) length of restoration. We base our views on the fact that each device pole location was not entered by equipment traveling at highway speeds. Multiple device poles were laid out and set utilizing the hard shoulder area as our transportation travel area, not the high speed travel lane. The equipment used to place these poles at their designated location was one boom truck which traveled with the semi truck along the shoulder.

After further review of the equipment and existing conditions, we feel that 25' (LF) each way from the center of a device pole is more than fair as this was the area where equipment would have entered from the shoulder and not at highway speeds.

Attached is documentation which shows many existing shoulder conditions and other various erosion problem areas that are existing, and continue to cause problems for Turnpike maintenance.

We are also certain that this could be substantiated by subcontractors that specialize in repairing erosion issues for the Turnpike on this specific stretch of highway. There are currently three additional contractors working on the Succasst now and have been since Miller Electric commenced work on this project. ICA is the general maintenance contractor who is constantly on the shoulder of the expressway maintaining the street lighting and performing all incidental maintenance. A company called CAL is on the expressway repairing erosion problems and continually placing sod in areas which require it. The

The erosion issue is not focused primarily on service pole locations as this project runs the entire length of all the three expressways. There are existing shoulder erosion problems the length of the expressways and some of these locations are in areas where Miller Electric Company may have placed pull boxes and splice vaults to support the backbone of the project.

The lack of good soil conditions on the Suncoast is the major problem affecting the erosion conditions, and is an ongoing maintenance issue for the Turnpike. As previously stated, there is a contractor on the expressway whose only function is to identify eroded areas and restore them. Miller Electric accepts some of the responsibility for certain shoulder areas disturbed in order to construct the project; however, Miller Electric Company has the reasonable expectation to be able to pull off the hard shoulder with service vehicles and equipment without causing detrimental damage to the entire shoulder area.

Please be aware that if Miller Electric has caused erosion issues we will, as we always have, repair them. However there are a large amount of erosion issues on this highway that are not the cause of construction and continue to linger due to the lack of growth that seems to plague many areas surrounding this highway.

MEC rebuttal paper included the following statements:

Miller Electric Company disagrees with the Department's position that 300' (LF) length of restoration at each device pole is fair and equitable. Over the past few weeks, Miller has performed a complete survey of the entire roadway and we feel that the large majority of the shoulder erosion problems are pre-existing conditions.

We wish to rescind our previous offer to repair 50 LF of shoulder restoration after further review of the entire roadway. We will take each shoulder area into consideration on a case by case basis.

TPK POSITION & REBUTTAL

TPK position paper included the following statements:

The Department respectfully submits this statement and explanation of its position regarding the required length of shoulder restoration that will be established for the referenced project. This issue is to be presented to the Disputes Review Board on May 01, 2008 at the HNTB Sun-Nav office at 5912 Breckenridge Parkway, Suite E; Tampa, Florida 33610.

Department Position:

The Plans define the restoration requirements as follows:

Polk Parkway Plan Sheet IT-519 General Note No. 6

Veterans Expressway Plan Sheet IT-70 General Note No. 6

Suncoast Parkway Plan Sheet IT-213 General Note No. 5

The note on all three plan sheets states, "The work corridor shall be restored to pre work conditions"

The Departments position is that the wheeled traffic of the construction vehicles in the construction zones damaged the shoulder vegetation contributing to, if not causing shoulder erosion in these areas. The Department feels that 300 (LF) linear feet maximum is a fair and equitable length of required shoulder restoration at each construction zone.

Based on the position statements, it can be concluded that both Miller Electric Company and the Department acknowledge the strong possibility that damage to the shoulder vegetation by construction equipment traffic could have caused or contributed to the shoulder erosion experienced in the work zones. The dispute as presented to the DRB concerns the length of shoulder that was affected by construction vehicle traffic through the several required stages of construction at each location. This length is essential to the request that we have before the Board to help establish a *"maximum length of shoulder restoration to be required at each device location."*

This project is governed by the Standard Specifications for Road and Bridge Construction date 2004. In addition to this there are Supplemental Specifications and Special Provisions applicable to this project. Any of these specifications referenced will be found in the attachments section.

The damage to the shoulders was not identical on the three projects possibly due to the different soil types and vegetation existing on each. At the same time, the three projects are similar with the sequencing of events and equipment used to install the devices.

The average total length of equipment placed end to end utilized to complete the installation of the concrete device poles equals 301.4 (LF) linear feet. This average was based on 6 days of installation operations and does not include any consideration for the distance required to safely exit and reenter the roadway.

The average length of equipment placed end to end utilized to complete directional bores equals 285.5 (LF) linear feet. This average was based on 2 days of installation operations and does not include any consideration for the distance required to safely exit and reenter the roadway.

The average total length of equipment placed end to end utilized to complete the installation of the drilled shaft foundations equals 205.3 (LF) linear feet. This average was based on 3 days of installation operations and does not include any consideration for the distance required to safely exit and reenter the roadway.

The Department's recommendation for restoration is based on the number and size of vehicles that must utilize the shoulder in order to complete the required operations. The Department feels that the recommended 300 (LF) linear feet maximum shoulder restoration requirement is fair and equitable to both the Department as well as Miller Electric.

TPK Rebuttal included the following statements:

The Department disagrees with the amount of equipment utilized at the device locations as well as the staging procedures as described by Miller in their Position Statement.

The Department contends that these operations could not be and was not contained within a 50 (LF) linear feet area as suggested by Miller.

The Department acknowledges the poor soil conditions along the Suncoast as well as the ongoing operations by maintenance forces doing erosion repairs. The Department also acknowledges that concurrent construction operations are being done throughout the system by other contractors with separate contracts. The Department does not seek to hold Miller responsible for the damage caused by others. It is extremely difficult in most areas to determine the exact length of shoulder affected by ITS construction activity. It is because of these factors that we have requested the DRB to help establish a maximum required length to govern the shoulder restoration in areas where the exact limits of construction activity cannot be determined. This request addressed shoulder restoration only because it is based on the impacts of construction activities, staging and sequencing of events.

This request does not address restoration along the conduit trunk line because there is no question that equipment was present in all areas that conduit was installed. Any areas of restoration in question along the conduit trunk line should be evaluated individually and not as a part of this request that is intended to address shoulder restoration only.

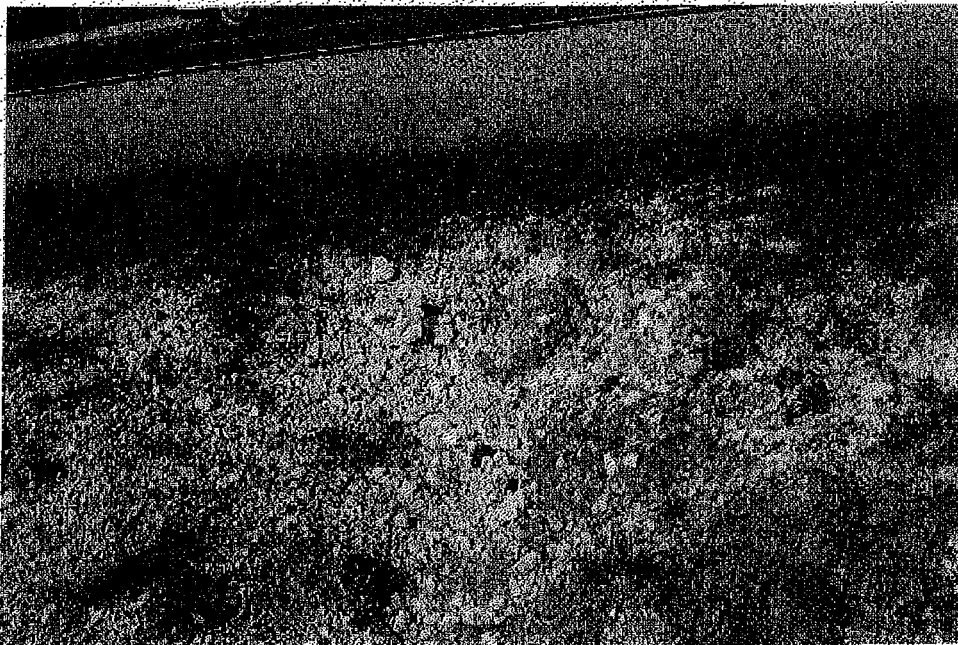
The Department seeks to arrive at a fair and equitable agreement concerning the maximum limits of shoulder restoration to be required on this Project. The Department as explained in its Position Paper feels that 300 (LF) linear feet is fair and equitable requirement.

DRB FINDINGS OF FACTS

The DRB visited the Suncoast Expressway Project and viewed the worksite conditions in question. We were accompanied by representatives of MEC, the CEI (HNTB), and the TPK. The board took particular note of work completed, worksite restoration efforts, and existing soil and grass conditions away from the worksites.

The board viewed worksites at issue, slopes near the worksites, and slopes well separated from the work areas. At the vast majority of worksites, the board did not observe any difference between the slopes where work was performed and the existing condition of nearby slopes where no work was performed. That included adjacent front slopes, median slopes, and front slopes on the opposite side of the road.

Observed were numerous shoulder areas which had previously been re-stabilized by organizations other than MEC, or attempts had been made to stabilize the soil. The DRB observed the following:



Introduction of limerock



Multiple layers of Geotec Fabric



Other areas being resodded by TPK

As noted in the aforementioned pictures, the introduction of limerock, multiple layers of geotec fabric, and the fact that TPK has and continues to resod other areas on the project, these efforts appear to have varying degrees of success and numerous failures, all by no fault of MEC.

The DRB observed several worksite areas where MEC and the TPK agreed still requires some additional restoration work because of remaining disturbed and unrestored soils and slopes. Examples include ruts caused by construction vehicles, and disturbed soils that need to be stabilized. Both parties agreed that some additional restoration work by MEC is required at various locations.

The DRB also observed several areas where MEC restorations were very successful with work efforts similar to the areas at issue. DRB observations and MEC, CEI and TPK concurred the apparent difference between success and failure was the soil condition.

In most cases, areas the TPK and the CEI identified as requiring remediation under the proposed 300 foot re-sodding criteria did not appear to be significantly worse than adjoining sections across the same roadway, nor on the lateral areas on the opposite roadway, neither of which contained contract activities by MEC.

The TPK and CEI both said it was very difficult for them to specifically identify areas where damage was caused only by MEC, and in fact, during the hearing they stated that the primary cause is the different soil conditions on the Suncoast section.

The difficulty is caused by the existing eroded and denuded slope conditions throughout the Suncoast Expressway, and concurrent construction by other contractors. In addition, it appeared mowing equipment further degraded the slope conditions. The DRB also observed ongoing erosion rehabilitation efforts underway in the form of re-grading and re-sodding, independent to the contract in question.

The board questioned MEC, TPK and CEI about the slope restoration issues on the Suncoast that did not exist on the Veterans or the Polk. It was agreed by all parties that soil conditions on Suncoast differed significantly from the other two Expressways. The parties further stated and agreed that MEC utilized the same construction operation on all three projects, but there are no apparent restoration issues for construction work on the Veterans or Polk Parkway Projects.

During the DRB hearing, the CEI and MEC reiterated their positions of 300 lf and "case by case basis" respectively to define the areas to be restored. The CEI also stated the Contract documents required sod as the only acceptable means of restoration.

The board asked several questions to better understand the issues, the Contract requirements, and the proposed solutions.

575-5 Basis of Payment.

Prices and payments will be full compensation for all work and materials specified in this Section, and the satisfactory disposal of excavated material, except the furnishing of the fertilizer, and the furnishing and application of the water.

Fertilizer and water will be paid for as specified in 570-6.

The work and materials for pegging of sod, directed by the Engineer (as provided in 575-3.2), will be paid for as Unforeseeable Work.

Payment will be made under:

Item No. 104-	4-	Mowing - per acre.
Item No. 2104-	4-	Mowing - per hectare.
Item No. 570-	5-	Fertilizer - per ton.
Item No. 2570-	5-	Fertilizer - per metric ton.
Item No. 570-	9-	Water for Grassing - per thousand gallons.
Item No. 2570-	9-	Water for Grassing - per kiloliter.
Item No. 575-	1-	Sodding - per square yard.
Item No. 2575-	1-	Sodding - per square meter.

Given the notes relating to payment for work under a sodding item, the contractor should have reasonably anticipated payment for any sod that was necessary to "Regrade and sod all areas disturbed during construction."

The DRB reviewed the aforementioned contract information with the TPK, CEI and MEC at the hearing and was not informed of any other references in general notes or special provisions definitively quantifying the areas to be restored after contract requirements were fulfilled.

During the field review, the DRB observed widespread erosion and a paucity of grass on most areas of the Suncoast whether near or away from the work sites. It was most often difficult for the board to see a difference between pre-work conditions and the restoration sites at issue.

Discussions between all parties during the field review and the hearing specifically addressed the poor soil conditions and the difficulty of defining the area to be restored by MEC. Furthermore, TPK Maintenance realizes there is a problem as evidenced by the extensive shoulder repair work being performed by other contractors.

The board cannot objectively or rationally arbitrarily define limits for MEC to restore front slopes at the worksites because the pre-existing conditions throughout the Suncoast cannot be differentiated from the post construction conditions.

Further, the Plan Notes and Supplemental Specifications addressing sod are unclear. The General Notes state restoration should be sod and included in the cost of the pole, etc. Then the Clearing and Grubbing notes state that sod should be paid for under a Sod Pay Item. The Supplemental Specification's were modified by the Department and had the Department intended for all the sod to be paid for as "incidental" they would not have revised the supplemental specifications basis of payment section to include a pay item. Furthermore, the

General Notes, also state that the work corridor shall be restored to pre-work conditions, not specifically "sod."

DRB Recommendation

The DRB believes the expectation that MEC should accept responsibility for a condition existing prior to its activities is neither fair nor equitable.

The DRB believes the 300 lf required by the FDOT to include sod restoration at a work zone is unsupported and is not fair nor equitable since the FDOT acknowledges the main contributing factor to the damaged work zone is actually the poor soil conditions on the Suncoast.

The DRB therefore recommends that a price be negotiated for sodding, which will include the costs for re-grading and repair of the areas of erosion or disturbed areas beyond the immediate vicinity of the construction performed by MEC. This will allow the TPK to designate the size of the areas to the degree acceptable to them and remunerate the contractor for the resulting efforts, therefore resolving the issue in a fair and equitable manner.

The Board sincerely appreciates the cooperation of all parties and the information presented for our review in making this recommendation.

The Board unanimously reached the recommendation and reminds the parties that it is only a recommendation. If the Board has not heard from either party within 15 days of receiving this recommendation, the recommendation will be considered accepted by both parties.

Submitted by the Disputes Review Board

Signed for and with concurrence of all members.

Tom Rice, Kent Selzer, Mick Jameson

Tom Rice, Chairman