

# STATE OF NORTH CAROLINA

## SPECIAL REVIEW

NORTH CAROLINA DEPARTMENT OF TRANSPORTATION  
FERRY DIVISION

MOREHEAD CITY, NORTH CAROLINA

JUNE 2005

OFFICE OF THE STATE AUDITOR

LESLIE W. MERRITT, JR.

STATE AUDITOR

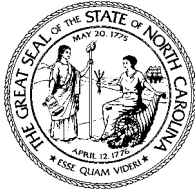
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**LETTER OF TRANSMITTAL**

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June 2, 2005

The Honorable Michael F. Easley, Governor  
Members of the North Carolina General Assembly  
Mr. Lyndo Tippet, Secretary  
Department of Transportation

Ladies and Gentlemen:

Pursuant to General Statute §147-64.6(c)(16), we have completed our special review into allegations concerning the Ferry Division of the North Carolina Department of Transportation. The results of our review, along with recommendations for corrective action are contained in this report.

General Statute §147-64.6(c)(12) requires the State Auditor to provide the Governor, the Attorney General, and other appropriate officials with written notice of apparent instances of violations of penal statutes or apparent instances of malfeasance, misfeasance, or nonfeasance by an officer or employee. In accordance with that mandate, and our standard operating practice, we are providing copies of this report to the Governor, the Attorney General and other appropriate officials.

Respectfully submitted,

*Leslie W. Merritt, Jr.*

Leslie W. Merritt, Jr., CPA, CFP  
State Auditor



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## OVERVIEW

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The mission of the North Carolina Department of Transportation is, “to provide and support a safe and integrated transportation system that enhances the state.” To accomplish this mission, the Department directs, plans, constructs, maintains and operates the second largest state-maintained transportation system in the nation. North Carolina’s transportation system includes aviation, ferry, public transportation, rail, and highway systems. The Department is divided into 11 divisions, including the Deputy Secretary for Transit’s Office. The Deputy Secretary for Transit oversees the aviation, ferry, public transportation, rail and the bicycle and pedestrian divisions.

The Ferry Division transports over 1 million vehicles and more than 2.5 million passengers each year. The Division operates eight routes, has 25 ferries and employs over 400 workers. Ferry Division employees are located at eight ferry operations, the marine maintenance shipyard and the administrative offices. The Division’s routes cover five separate bodies of water – the Currituck and Pamlico sounds and the Cape Fear, Neuse and Pamlico rivers. A full-service shipyard, dredge, military-style landing craft utility vehicles, tugs, barges and other support vessels support ferry division operations.

The Ferry Division’s administrative office is located in Morehead City. Ferry operations are divided into two districts. District 1 includes the Hatteras, Ocracoke, Swan Quarter and Currituck operations. District 2 includes the Pamlico River, Cherry Branch, Cedar Island and Southport operations. The marine maintenance shipyard is located at Mann’s Harbor and oversees the maintenance and materials, dredge and field maintenance units.



## **OVERVIEW (CONCLUDED)**

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The Ferry Division's memorabilia warehouse is also located at the shipyard in Mann's Harbor.

The Ferry Division receives an appropriation from the Highway Fund each year and generates revenues from ferry tolls and the sale of memorabilia/souvenir items. The Division's revenues were approximately \$22,410,313 for the fiscal year ended June 30, 2004, of which approximately 89% was from state appropriations and 11% was from ferry tolls and memorabilia. For the same fiscal year, the Ferry Division's total expenditures were \$19,942,67.78.

For the fiscal year ending June 30, 2005, the Division's budgeted appropriations total \$21,264,811.

## INTRODUCTION

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We received numerous allegations that the North Carolina Department of Transportation (DOT) Ferry Division violated personnel, contract and operational policies. We identified and investigated 44 allegations of misconduct. The 44 allegations were separated into the following categories:

- Allegations that the Division Director, the former Assistant Director for Field Maintenance and Dredge Operations, the Dredge Superintendent, the Operations Manager for Pamlico River (formerly the Information and Communication Specialist), the Superintendent for District I, three Marine Electricians and a Maintenance Mechanic at Hatteras use state vehicles to commute between home and work.
- Allegations that the Marine Design Engineer drives his personal vehicle for travel and is reimbursed at the higher rate although state vehicles are available for use.
- Allegations that the Ferry Director and the former Assistant Director for Field Maintenance and Dredge Operations misused their state-issued cellular telephones.
- Allegations that three employees performed duties at political fundraisers while on state time.
- Allegations that the Director and Business Officer misuse ferry memorabilia inventory for personal and political reasons.
- Allegations that the Director misused DOT photogrammetry staff and wasted state funds by requesting they conduct a flight to take an aerial photograph of his home.
- Allegations that the Director had the above referenced photograph framed at the state's expense then gave it to a friend.

## **INTRODUCTION (CONTINUED)**

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- Allegations that the Director, the Business Officer and the former Assistant Director for Field Maintenance and Dredge Operations falsely submitted time earned for travel on a holiday.
- Allegations that the Director and Business Officer were involved in questionable sales transactions of ferry-owned land.
- Allegations the Director pressured two Operations Managers to change statements on an official accident form.
- Allegations that the Director received gifts, including a trip, from vendors.
- Allegations that the Director and the Business Officer purchased electronic equipment for personal use on Ferry Division accounts at two local vendors.
- Allegations the Swan Quarter Operations Manager is routinely absent during the workday because he is performing his secondary employment during that time without taking leave.
- Allegations that a contract for vending machines and a contract for memorabilia/souvenirs were granted to two vendors without being put out to bid.
- Allegations that a 19-foot Flat Bottom Jones Brothers Skiff vessel and a 25-foot Sea Ox are unaccounted for and potentially being used for personal use by the Director.
- Allegations that three employees were paid at a higher pay rate than their position allowed.
- Allegations that two employees were consistently recording unearned hours of overtime on their timesheets.

## **INTRODUCTION (CONTINUED)**

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- Allegations that two Operations Managers are in dual employment as both Operations Managers and Security Coordinators and receiving payment for both positions.
- Allegations that two supervisors at Mann's Harbor allow favored employees to be absent from work without taking leave of any type while others must use vacation leave, bonus leave, sick leave or leave without pay for absences.

We investigated the allegations by conducting on-site visits to four ferry facilities and interviewing 35 individuals internal and external to the Ferry Division. We reviewed applicable agency policies and state regulations. We examined internal audit work papers, timesheets (as well as employee absentee and leave balance reports), personnel files (as well as personnel action forms and job descriptions), mileage logs, cellular phone records, travel reimbursement reports, inventory adjustment reports, settlement claims and incident reports. We conducted physical verification of certain equipment, memorabilia inventory, vehicles and time monitoring systems.

With the exception of our findings concerning the improper use of state vehicles (see findings 1-7), our investigation did not substantiate the above allegations. For some issues no evidence exists to support the allegations and for others we identified evidence that directly refutes the allegations made. With respect to personnel issues, we noted one instance in which the Ferry Division failed to follow appropriate procedures for the permanent reallocation of an employee, resulting in an absence of the required Office of

## **INTRODUCTION (CONCLUDED)**

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State Personnel authorization and accompanying personnel action form. However, we determined the reallocation was an allowable action and the division is currently working with DOT human resources to file the appropriate documentation.

## **FINDINGS AND RECOMMENDATIONS**

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### **1. THE FERRY DIVISION DIRECTOR IS IN VIOLATION OF MOTOR FLEET MANAGEMENT POLICIES REGARDING PERSONAL USE OF STATE-OWNED VEHICLES BY COMMUTING TO AND FROM WORK.**

During our review, we determined the Ferry Division Director commutes between his home and work in a state-owned vehicle on a daily basis. The Director resides on Cedar Island approximately 43 miles from his assigned duty station in Morehead City. He said he commutes daily in a state-owned Ford Expedition (PM 8174) from his home to either the administrative office in Morehead City or other ferry facility locations. The Director said his state-owned vehicle is needed for on-call purposes so he can attend to Ferry Division emergencies. The Director said he is on-call 24 hours a day, seven days a week and emergencies can occur at any time.

The Director said he does not always work out of the Morehead City office but may travel to any one of the seven Ferry Division branches. Six of the branches are located north of Cedar Island while the Morehead City office is south of Cedar Island. The Director leaves from home when he visits any of the six northern facilities because it is closer. The Director said he has never been informed he is required to pay a commute fee and has never paid one. He also said his vehicle is individually and permanently assigned.

The Director's daily mileage logs for his state-owned vehicle for August 2003 through March 2005 indicate he commuted to the Morehead City facility for 288 of 324

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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days (89%). For recording purposes, it appears the Director reversed his actual point of departure and destination for days he commuted between Cedar Island and Morehead City. However, the actual mileage incurred appears to be accurate.

Under G.S. 14-247, Private use of Publicly Owned Vehicle,

*It shall be unlawful for any officer, agent or employee of the State of North Carolina, or any county or of any institution or agency of the State, to use for any private purpose whatsoever any motor vehicle of any type or description whatsoever belonging to the State, or to any county, or to any institution or agency of the State.*

The Department of Administration's MFM Regulations Manual states commuting privileges are not considered a private purpose only when the following conditions exist:

- 1. By virtue of his/her position, the employee is entitled to use the vehicle and is so approved by the Secretary of the Department of Administration.*
- 2. Employee's duties are routinely related to public safety or are likely to expose him/her to life-threatening situations.*
- 3. Employee's home is his/her official workstation and the vehicle is parked at the home when not being used for official business.*
- 4. State-owned vehicle is required for a trip the following workday and the employee's home is closer to the destination than the regular work station and the employee does not have to report to his/her regular work station before beginning the trip. Frequent occurrences of this situation would require MFM approval.*
- 5. Temporary and agency-assigned vehicles may not be driven to an employee's home unless one of the above four conditions applies.*

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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MFM regulations also state,

*Employees who routinely drive any state-owned vehicles between their home and work station shall reimburse the state for mileage. Reimbursement shall be made by payroll deduction. The amount of reimbursement shall approximate the benefit derived from the use of the vehicle as prescribed by federal law and at the rate established by Motor Fleet Management (MFM) and shall be for 20 days per month. Commuting privileges require prior approval of MFM.*

While we do not dispute the need for the Director to have an individually assigned state vehicle or his on-call status, we determined his daily commute in this vehicle violates Motor Fleet Management regulations. According to the Manager of Motor Fleet Management (MFM) the Director's vehicle is not individually assigned but is assigned to the Ferry Division. The MFM Manager provided vehicle assignment forms (FM 30) for the Director's current and prior vehicles. The FM 30's identify the Director's prior vehicles as designated for agency, not individual, use. The FM 30 for the Director's current vehicle is not clearly marked for designation but is agency-assigned in the MFM computer system. According to the MFM Manager, agency-assigned vehicles cannot be used for commuting and MFM regulations stipulate agency-assigned vehicles remain parked at the workstation after business hours.

The MFM Manager confirmed that individually assigned vehicles may be used for commuting as long as such use has been approved by the Secretary of the Department of Administration, per MFM regulations. The MFM Manager also explained that if the Ferry Director had been commuting in an individually assigned vehicle and had been



## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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authorized by the Department of Administration to do so, he would still be required to pay a commute fee.

The MFM Manager stated the Ferry Director's on-call status does not qualify him as exempt from the commute fee and he does not meet any of the other criteria for exemption from the fee.

We determined the Director received \$12,925.80 in unreported benefits by commuting in a state-owned vehicle without paying the required commute fee. Our calculation of benefits derived from commuting was limited to the 20-month period of mileage logs reviewed.

### **RECOMMENDATION**

We recommend all Ferry Division employees, including the Director, cease commuting in state-owned vehicles unless such use has been appropriately authorized by the Department of Administration. If employees are approved to commute in individually assigned state-owned vehicles, the monthly commute reimbursement should be made by payroll deduction. We recommend Ferry Division employees adhere to the requirement that agency assigned vehicles not be used for commuting purposes. Management should ensure all division employees authorized to commute drive an individually assigned vehicle. Additionally, the Ferry Division should reimburse Motor Fleet Management \$12,925.80 for the benefit derived from commuting in a state-owned vehicle. The Ferry Division should determine, through legal counsel, an equitable method of repayment from the employee that received the benefit.

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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**2. THE DREDGE SUPERINTENDENT IS IN VIOLATION OF MOTOR FLEET MANAGEMENT REGULATIONS REGARDING COMMUTING IN AN AGENCY ASSIGNED VEHICLE AS WELL AS COMMUTING WITHOUT APPROPRIATE AUTHORIZATION.**

The Dredge Superintendent confirmed that he drives his state-owned vehicle (Chevrolet Suburban PM 2365) to and from his home on a daily basis. The Dredge Superintendent's home is approximately 76 miles from his assigned duty station at Hatteras. The Dredge Superintendent stated he usually works at his duty station once a week but is at other locations the remainder of the workweek. The position description for the Dredge Superintendent does include travel to proposed sites for dredge operations as well as to where dredging is being conducted as part of his supervision and monitoring duties. Review of mileage logs for this employee reveal 210 of 296 days of travel (71%) were to locations other than his duty station. Because his travel is usually to locations other than to his assigned duty station the Dredge Superintendent is exempt from the commute fee but still needs to obtain Department of Administration approval per MFM regulations.

MFM records show the Superintendent is individually assigned a Dodge Caravan with license plate PM 7915. However, he is currently driving the Director's previously driven state-owned sport utility vehicle identified above. A letter from the Ferry Division Business Officer, dated March 10, 2005, states the Dodge Caravan was reassigned to the Morehead City Office for agency use on May 29, 2003. According to the letter, the Dredge Superintendent was reassigned the Director's previous vehicle (Chevrolet Suburban PM 2365) on October 28, 2004. As stated above, the Director's prior vehicles

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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were agency-assigned, therefore not allowable for commuting use. Additionally, no evidence exists that the Ferry Division ever sent the required FM 35 forms for the reassignment of those vehicles to MFM for processing.

### **RECOMMENDATION**

We recommend the Ferry Division obtain and document the required Department of Administration approval for any employee exempt from the commute fee because his home is closer to the destination than the assigned duty station. Additionally, we recommend Ferry Division employees adhere to the requirement that agency-assigned vehicles not be used for commuting purposes. Management should ensure all agency-assigned vehicles are parked at workstations after work hours.

**3. THE DISTRICT SUPERINTENDENT IS IN VIOLATION OF MOTOR FLEET MANAGEMENT REGULATIONS REGARDING COMMUTING IN A STATE-OWNED VEHICLE WITHOUT APPROPRIATE AUTHORIZATION.**

The District Superintendent oversees the Ocracoke, Hatteras, Swan Quarter and Currituck Ferry Division locations. He said he drives his state vehicle (Chevy Tahoe PL 5568) to his home in Manteo and commutes to any one of these four locations on any given day. The District Superintendent said a former Secretary of Transportation gave him verbal approval to drive his state vehicle home. No written documentation is available to support this claim. The District Superintendent said he does not have a designated duty station. However, the Morehead City office provided information that identifies his assigned duty station as the Hatteras facility. The District Superintendent said that if he had to travel to Hatteras before traveling to another location it would add 150 miles of travel to his day.

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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He said his home is closer to the other locations than the Hatteras facility. The District Superintendent said no one has ever mentioned a commuting fee to him but he submitted paperwork for the commute fee in late 2004 to the Morehead City office. He said he has not heard back from the office regarding this matter.

The MFM Manager verified the District Superintendent is individually assigned a state vehicle. The MFM Manager said the District Superintendent may be exempt from the commute fee if he travels from home to various locations and his home is closer than his duty station to these locations. However, as cited above, frequent occurrence of this practice requires Department of Administration approval. If the District Superintendent travels from his home to his duty station every day he would need to pay the commute fee.

We reviewed this employee's mileage logs for August 2003 through March 2005. He recorded Hatteras as the destination for 114 of the 334 days (34%).

The mileage logs from August 2003 through the first of July 2004 for his state-owned vehicle (Dodge Durango PM 5894) show Manteo (approximately 75 miles from Hatteras) or Rodanthe (his beach house- 30 miles from Hatteras) as the point of origination for daily travel. These mileage logs indicate the District Superintendent drove from his home to his duty station 49% of this time. The mileage logs from mid-July 2004 through March 2005 for the Tahoe (PL 5568) list Hatteras as the point of departure for 107 of the 128 entries. This employee's signature is present for each of these daily trip notations. We contacted

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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this employee to confirm his earlier statement that he was commuting from his home in the state vehicle. He again said he commutes on a daily basis to either his Hatteras duty station or one of the other three facilities in his district even though these mileage logs list Hatteras as the origination point for daily travel. He did not provide a clear explanation why he did not record Manteo as his daily point of departure. The District Superintendent said he drives to his Hatteras duty station prior to traveling to other locations each day when he stays overnight at his second home in Rodanthe, but not when he departs from his home in Manteo. We were unable to determine the actual percentage of the employee's travel that was commuting to and from his home because of the inaccuracies in points of departure on the mileage logs. If the District Superintendent drives to his duty station prior to travel as indicated on the mileage logs we consider him to be commuting in a state-owned vehicle without proper authorization and without paying the required commute fee. If his actual travel qualifies him as exempt from the commute fee, we consider this employee to be commuting in a state-owned vehicle without proper authorization.

### **RECOMMENDATION**

We recommend all Ferry Division employees cease commuting in state-owned vehicles unless the Department of Administration has appropriately authorized such use. In addition, if employees are approved to commute in individually assigned state-owned

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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vehicles, the monthly commute reimbursement should be made by payroll deduction. For any employee exempt from the commute fee due to frequent travel from home, if closer to the destination than the assigned duty station, we recommend the Ferry Division obtain and document the required Department of Administration approval.

**4. THE FORMER INFORMATION AND COMMUNICATION SPECIALIST WAS IN VIOLATION OF MOTOR FLEET MANAGEMENT REGULATIONS REGARDING COMMUTING IN A STATE-OWNED VEHICLE WITHOUT APPROPRIATE AUTHORIZATION.**

This individual has since applied for and transferred to the Operations Manager position at the Pamlico River facility. As the Information and Communication Specialist, this individual traveled exclusively in his state vehicle (Dodge Caravan PM 5429) to promote the Ferry Division around the state. His duties included installing 1-800 BY FERRY signs and speaking to groups at schools, fairs and tourist attractions. This employee said he did not have an assigned duty station as the Information and Communication Specialist. However, documentation provided by the Morehead City office shows his assigned duty station was Morehead City. MFM confirmed this employee had an individually assigned vehicle at the time he was in the Information and Communication Specialist position.

This employee said he would travel from his home in Fairfield to various locations between South Carolina and Virginia. He would travel to the Swan Quarter or Pamlico

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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River facilities to submit paperwork once or twice a month. The employee said someone at MFM told him he was exempt from the commuting fee when he was hired (approximately 10 years ago) but he has no written documentation. Again, as cited earlier, an employee may drive a state-owned vehicle home if his home is closer to the next day's destination and he is not required to go to his duty station before travel but frequent occurrences of this practice require approval from the Department of Administration.

We reviewed this employee's mileage logs from August 2003 through June 2004 when he was transferred to the Operations Manager position and quit driving a state-owned vehicle.

Mileage logs indicate only one of 153 days of travel to his duty station in Morehead.

The March 10, 2005, letter from the Business Officer says this vehicle (Dodge Caravan PM 5429) was reassigned to the Director for agency use on June 7, 2004. Again, no evidence exists that the Ferry Division ever sent the required FM 35 form for the reassignment of this vehicle to MFM for processing as their system shows it as currently assigned to the former Information and Communication Specialist.

### **RECOMMENDATION**

We recommend the Ferry Division obtain and document the required Department of Administration approval for any employee exempt from the commute fee due to frequent travel from home, if it is closer to the destination than the assigned duty station.

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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**5. THE FIELD MAINTENANCE SUPERINTENDENT IS IN VIOLATION OF MOTOR FLEET MANAGEMENT POLICIES REGARDING PERSONAL USE OF A STATE-OWNED VEHICLE BY COMMUTING TO AND FROM WORK.**

The original allegations regarding improper vehicle use included the former Assistant Director for Field Maintenance and Dredge Operations. This employee retired from state service September 30, 2004. While in this position, his assigned duty station was the Cherry Branch facility. The Ferry Division was only able to locate his mileage records from August 2003 through December 2003. Sixty-one percent of his travel for this time was to locations other than his assigned duty station.

When he retired, the former Assistant Director for Field Maintenance and Dredge Operations' duties were divided between two positions, the Field Maintenance Superintendent and the Dredge Superintendent. The Dredge Superintendent's vehicle use was addressed in Finding 2.

We determined the Field Maintenance Superintendent commutes in a state-owned vehicle (2004 Suburban, PL 5560) on a daily basis and has done so since November 19, 2004 when he was promoted. The Field Maintenance Superintendent said he does drive a state vehicle from his home in Beaufort to the Cedar Island facility, his assigned duty station, as well as to any of the other ferry facilities he oversees. He said he might travel to the Hatteras, Southport, Mann's Harbor, Pamlico River, Cherry Branch, Swan Quarter or Currituck facilities. The Field Maintenance Superintendent estimates he works at the Cedar Island facility two to three times each week but that he may travel to other facilities from there.



## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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The Field Maintenance Superintendent said his home is approximately 38 miles from his duty station. When questioned, the Field Maintenance Superintendent said he believes the Cherry Branch facility is the only location he oversees that is closer to his home than to his duty station. The Field Maintenance Superintendent's mileage logs indicate the round trip distance between his home and duty station is 72 miles.

The Field Maintenance Superintendent said he and the Accounting Technician in the Morehead office discussed the assignment of his vehicle and the issue of a commuting fee. The Field Maintenance Superintendent said they determined he did not have to pay a commuting fee because his vehicle was an agency vehicle even though it was assigned in his name. He said the agency designation was determined because other employees use the vehicle. When questioned how other employees would use the vehicle if he drove it to and from his home every day, he explained he would offer the vehicle to someone if he was at a facility and an employee would mention needing a vehicle to run an errand such as picking up parts.

The Accounting Technician in Morehead recalled discussing the type of assignment with the Field Maintenance Superintendent but said she has no recollection of discussing a commuting fee with him.

For the purpose of this review, commuting was determined to occur any time the Field Maintenance Superintendent drove from home directly to his duty station as the first trip of the day.

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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The Field Maintenance Superintendent's mileage logs for November 2004 through March 2005 indicate he commuted to the Cedar Island facility for 68 of 88 days of travel (78%). Of those 68 days the Field Maintenance Superintendent commuted, he traveled only from his home to his duty station and back to his home 48 days, more than half of his entire travel days.

Because the majority of this employee's travel is to his assigned duty station it appears he is ineligible to be exempt from the commute fee. We determined the Field Maintenance Superintendent received \$2,559.60 in unreported benefits by commuting in a state-owned vehicle for the 4.5 months since he was promoted to this position.

The MFM form submitted the day the Field Maintenance Superintendent picked the vehicle up at MFM in Raleigh does not indicate whether the vehicle is individually or agency assigned. However, all of the former Assistant Director for Field Maintenance and Dredge Operations' state-owned vehicles were agency assigned. MFM's Permanent Vehicle Assignment Form for the vehicle in question shows it assigned to the former Assistant Director and gives his drivers license number in the designated space. However, the Field Maintenance Superintendent signed as the person picking up the vehicle from MFM. According to the MFM Manager, the former Assistant Director is still assigned the vehicle in the MFM system.

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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The documentation received from MFM included a letter dated November 10, 2004, from the Ferry Director to MFM requesting the Field Maintenance Superintendent's assigned vehicle be exchanged for a newer one with fewer miles. However, no evidence exists that the Ferry Division ever sent the required FM-35 form for the reassignment of the former Assistant Director's vehicle to the Field Maintenance Supervisor to MFM.

As stated previously, agency-assigned vehicles cannot be used for commuting and should remain parked at the workstation after business hours.

### **RECOMMENDATION**

We recommend all Ferry Division employees cease commuting in state-owned vehicles unless such use has been appropriately authorized by the Department of Administration. In addition, if employees are approved to commute in individually assigned state-owned vehicles, the monthly commute reimbursement should be made by payroll deduction. We recommend Ferry Division employees adhere to the requirement that agency-assigned vehicles not be used for commuting purposes. Management should ensure all division employees authorized to commute drive an individually assigned vehicle. Additionally, the Ferry Division should reimburse Motor Fleet Management \$2,559.60 for the benefit derived from commuting in a state-owned vehicle. The Ferry Division should determine, through legal counsel, an equitable method of repayment from the employee that received the benefit.

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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**6. THE FERRY DIVISION IS IN VIOLATION OF MOTOR FLEET MANAGEMENT REGULATIONS FOR FAILURE TO SUBMIT ALL VEHICLE REASSIGNMENT FORMS.**

As noted in findings 2 and 4, MFM records of vehicle assignments contradict the March 10, 2005, letter from the Ferry Division Business Officer that detailed several vehicle reassignments. Finding 5 notes that MFM vehicle assignment records contradict the division assignment for the vehicle driven by the Field Maintenance Superintendent. No documentation exists to indicate the Ferry Division submitted the appropriate reassignment forms to MFM even though the division considered these reassignments to have occurred as many as 20 months ago. MFM regulations state, "Request for a change of address or other driver information or to change the name of the driver when a new employee takes over the duties for an existing vehicle assignment shall be made on Form 35."

### **RECOMMENDATION**

We recommend the Ferry Division maintain accurate records for all permanently assigned state-owned vehicles. Management should ensure all employees are driving the vehicles they are assigned. Management should comply with MFM policies regarding vehicle reassignment and do so in a timely manner.

**7. FERRY DIVISION EMPLOYEES ARE IN VIOLATION OF MOTOR FLEET MANAGEMENT REGULATIONS REGARDING TRAVEL LOGS.**

MFM regulations state, "Travel logs (form FM-12) for permanently assigned vehicles are to be filled out on a daily or trip basis when the vehicle is in use. Log entries should accurately reflect the use of the vehicle." However, as noted above in Findings 1, 3 and

## **FINDINGS AND RECOMMENDATIONS (CONCLUDED)**

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4, these employees' mileage logs do not accurately reflect daily travel. As discussed above, the Director appears to have reversed his origination and destination sites although he recorded the correct corresponding mileage. The former Information and Communication Specialist recorded Swan Quarter as his daily point of departure even though he admits he was leaving from his home each day. This employee explained his home was within five miles of the Swan Quarter location so he believed it was okay to record the ferry branch as his point of departure. As discussed in Finding 3, the District Superintendent recorded Hatteras as his point of departure every day from mid-July 2004 through March 2005 even though he was actually leaving his home in Manteo or his second home in Rodanthe.

### **RECOMMENDATION**

We recommend all Ferry Division employees comply with MFM policies regarding travel logs for state-owned vehicles.

## APPENDIX

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Of the nine employees identified in the allegations, three do not drive Department of Administration motor fleet management vehicles. The Ferry Division electricians travel to different ferry facilities two to three times a week and are frequently called in to work on the weekends. The electricians commute in Department of Transportation (DOT) Division of Highways vehicles. (One of the electricians named in the original allegations has since retired but he commuted in a Division of Highways vehicle, as does his replacement.). The Division of Highways is not within the regulatory authority of Motor Fleet Management.

The Division of Highways Equipment and Inventory Control Unit Director said the Division of Highways owns vehicles that it leases to divisions within DOT. The Ferry Division pays a fee based on 40 hours usage per week for each vehicle and this fee covers maintenance, fuel and replacement costs. The Division of Highways Equipment and Inventory Control Unit Director said no mileage logs are kept on these vehicles and no commute fees are required. He said that division directors have the authority to determine how the vehicles are used and can allow employees to commute in them. Therefore, we take no exception to the commuting use of these vehicles by the employees named.

The Hatteras Maintenance Mechanic named in the allegation also drives a Division of Highways vehicle but does not commute to and from his home. He uses this vehicle to

## **APPENDIX (CONCLUDED)**

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obtain supplies in Nag's Head and Elizabeth City. Although the Ferry Director could authorize commuting in this vehicle, it remains overnight at the Hatteras facility unless the Maintenance Mechanic is traveling to Nag's Head or Elizabeth City first thing in the morning. When this occurs, the Maintenance Mechanic will drive the vehicle home the night before because his home is closer to those cities than the Hatteras ferry facility. The Ferry District Superintendent said this does not occur often and the Maintenance Mechanic informs him when it does.

The Marine Design Engineer named in the allegation confirmed he does drive his personal vehicle for all work-related travel. However, this employee stated he has never submitted for personal vehicle mileage reimbursement. We confirmed this with the Ferry Division Business Officer and the Processing Assistant who processes travel/mileage reimbursements.

## **STATE AUDITOR'S NOTE TO DEPARTMENT OF TRANSPORTATION'S RESPONSE**

The Department of Transportation issued a response to our Special Review on May 18, 2005. The response acknowledges our identification of several violations of Motor Fleet Management policies and agrees to work to ensure compliance with state regulations per our recommendations for Findings 2, 3, 4, 6 and 7. However, the response contains two points of contention with respect to the recommendations for Findings 1 and 5.

### **Finding No. 1**

The response to Finding No.1 agrees the Director should reimburse the State for unreported benefits received by commuting in a state-owned vehicle but disagrees with the amount of the recommended reimbursement.

Motor Fleet Management Regulations, North Carolina General Statute 143-341(8)(i) and the Department's Uniform Travel, Subsistence, and Transportation Policy state the reimbursement rate "*...shall approximate the benefit derived from the use of the vehicle as prescribed by federal law.*"

The Internal Revenue Service Publication: Employer's Guide to Fringe Benefits addresses the determination of the value of a vehicle an employer provides to an employee for commuting use. The publication states the Commuting Rule (\$3.00 round trip) can only be used if four specific requirements are met. We determined the Division Director did not qualify for use of the Commuting Rule because he did not meet all four of the following Commuting Rule requirements:

- The vehicle is provided to an employee for use in trade or business and, for bona fide noncompensatory business reasons, the employee is required to commute in the vehicle. This requirement is met if the vehicle is generally used each workday to carry at least three employees to and from work in an employer-sponsored commuting pool.
- The employer establishes a written policy under which the employee is not allowed to use the vehicle for personal purposes other than for commuting or de minimis personal use (such as a personal errand on the way between a business delivery and the employee's home). Personal use of a vehicle is all use that is not for trade or business.
- The employee does not use the vehicle for personal purposes other than commuting and de minimis personal use.
- If the vehicle is an automobile (any four-wheeled vehicle, such as a car, pickup truck, or van), the employee who uses it for commuting is not a control employee (a government employee whose compensation is equal to or exceeds Federal Government Executive Level V or an elected official.)



Additionally, the Motor Fleet Management Manager issued a memorandum dated April 21, 2005, stating:

*Motor Fleet Management bases the charge for commuting in a state-owned vehicle on the current rate allowed by the Internal Revenue Service. The only employees allowed to commute in Motor Fleet Management owned vehicles use this amount to calculate the commuting fee.*

**Finding No. 5**

The response to Finding No. 5 indicates disagreement with the Special Review's identification of \$2,559.60 in unreported benefits derived by the Field Maintenance Superintendent for commuting in a state-owned vehicle. The response cites the critical nature of the employee's duties and requirement that he be available 24 hours a day, 7 days a week to justify this employee's exemption from the commuting fee.

We disagree with the contention that job duties or on-call status exempt this employee from paying the required commuting fee. On-call status is not identified in Motor Fleet Management regulations, North Carolina General Statutes or Internal Revenue Service regulations as justification for exemption from fringe benefit commuting rules.

After carefully reviewing the Department's response, the Office of the State Auditor stands by the findings and recommendations in this report.

# RESPONSE FROM THE DEPARTMENT OF TRANSPORTATION



## STATE OF NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY  
GOVERNOR

1501 MAIL SERVICE CENTER, RALEIGH, N.C. 27699-1501

LYNDO TIPPETT  
SECRETARY

May 18, 2005

The Honorable Leslie W. Merritt, Jr.  
Office of the State Auditor  
20601 Mail Service Center  
Raleigh, North Carolina 27699-0601

Dear Mr. Merritt:

I have received the "Special Review" of the Ferry Division conducted by your staff. We greatly appreciate the time and effort that was devoted to this review. It was important to us to have an objective review of the Ferry Division.

I am pleased to note that none of the allegations that have been made against various employees of the Ferry Division were substantiated. Your staff did find, however, several violations of Motor Fleet Management policies, which we will address as follows:

**Finding Number 1 – The Ferry Division is in violation of Motor Fleet Management policies regarding personal use of State-Owned vehicles by commuting to and from work.**

This finding states that the Ferry Division Director received \$12,925.80 in unreported benefits by commuting in a State vehicle to work. While we agree that the Director should reimburse the State for the benefit of commuting in a State vehicle, we believe that the rate of reimbursement should be at the standard rate of \$3.00 per day for 20 days per month per Motor Fleet Management policy. In an October 22, 2004 letter from the Deputy Secretary for Transit, the Director was mandated to begin the process of paying the standard \$3.00 per day commuting fee. NCDOT will work with John Massey, Director of State Motor Fleet Management, to negotiate a mutually satisfactory amount and repayment schedule for past commuting fees. The appropriate process will be utilized through the Department of Administration to deduct the standard \$3.00 daily rate from the Director's salary in the future.

**Finding Number 2 – The Dredge Superintendent is in violation of Motor Fleet Management regulations regarding commuting in an agency assigned vehicle as well as commuting without appropriate authorization.**

The Ferry Division will work with John Massey, Director of State Motor Fleet Management, to ensure that all of the appropriate paperwork is completed and processed in order to comply with state regulations.

PHONE 919-733-2520 FAX 919-733-9150

**Finding Number 3 – The District Superintendent is in violation of Motor Fleet Management regulations regarding commuting in a State-Owned vehicle without appropriate authorization.**

The Ferry Division will work with John Massey, Director of State Motor Fleet Management, to ensure that all of the appropriate paperwork is completed and processed in order to comply with state regulations.

**Finding Number 4 – The former Information and Communication Specialist was in violation of Motor Fleet Management regulations regarding commuting in a State-Owned vehicle without appropriate authorization.**

Although this employee no longer serves the State in this capacity, the Ferry Division will ensure that commuting fees and other Motor Fleet Management policies are addressed properly in the future.

**Finding Number 5 – The Field Maintenance Superintendent is in violation of Motor Fleet Management policies regarding personal use of a State-Owned vehicle by commuting to and from work.**

This finding also states that the Field Maintenance Superintendent received \$2,559.60 in unreported benefits by commuting in a State vehicle to work. This position is critical to the timely repair of ferry mechanical equipment and as such requires that the employee be available 24 hours a day, 7 days a week. We will again work with State Motor Fleet Management to address the requirements for this position and complete the necessary paperwork to resolve any outstanding issues related to the commuting policy.

**Finding Number 6 - The Ferry Division is in violation of Motor Fleet Management regulations for failure to submit all vehicle reassignment forms.**

The Ferry Division will ensure that all future paperwork is satisfactorily completed to address vehicle reassignments and other Motor Fleet Management policies.

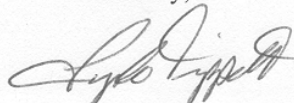
**Finding Number 7 – Ferry Division employees are in violation of Motor Fleet Management regulations regarding travel logs.**

The Ferry Division will work to ensure that all future paperwork is satisfactorily completed to address vehicle reassignments and other Motor Fleet Management policies.

The Honorable Leslie W. Merritt, Jr.  
May 18, 2005  
Page 3

Again we appreciate the assistance of your staff and the opportunity to bring all of our vehicles and personnel into total compliance with Motor Fleet Management policy. We also appreciate the critical role of the North Carolina Ferry System and believe that these findings will assist in assuring that the Division's practices are consistent with state policy. Please feel free to contact me with any additional questions or comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Lyndo Tippet".

Lyndo Tippet

LT/dk

cc: David D. King, Deputy Secretary for Transit  
John Massey, Director of State Motor Fleet Management

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In accordance with General Statutes 147-64.5 and 147-64.6(c)(14), copies of this report have been distributed to the public officials listed below. Additional copies are provided to other legislators, state officials, the press, and the general public upon request.

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Director, Fiscal Research Division

June 2, 2005

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