

STATE OF NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY GOVERNOR LYNDO TIPPETT Secretary

January 11, 2005

| MEMORANDUM TO: | Mr. Michael A. Pettyjohn, P.E. |
|----------------|---|
| | Division 11 Engineer |
| | Philip S. Harris, III, P.E., Manager Sol Office of the Natural Environment |
| FROM: | Philip S. Harris, III, P.E., Manager |
| | Office of the Natural Environment |
| | Project Development and |
| | Environmental Analysis Branch |
| SUBJECT: | Caldwell County, Widen US 321 from SR 1370 to SR 1500; |
| Solution. | State Work Order Number 8.2731303; TIP Number R-2237B |
| | |

Attached is the U. S. Army Corps of Engineers regulatory approval for the above referenced project.

PSH/gyb

Attachment

cc: Mr. Art McMillan, P.E.
Mr. Omar Sultan
Mr. Jay Bennett, P.E.
Mr. David Chang, P.E.
Mr. Randy Garris, P.E.
Mr. Greg Perfetti, P.E.
Mr. Mark Staley
Mr. John F. Sullivan, FHWA
Mr. Heath Slaughter, Division 11 DEO

TELEPHONE: 919-733-3141 FAX: 919-733-9794

PROJECT COMMITMENTS

Caldwell County Widen US 321 from SR 1370 to SR 1500 Federal Aid Project NHF-321(11) State Project 8.2731303 TIP No. R-2237B

In addition to the standard Individual Section 404 and 401 Permit Conditions, State Consistency Conditions, NCDOT's Guidelines for Best Management Practices for Protection of Surface Waters, the following special commitments have been agreed to by NCDOT:

Commitments Developed through Project Development and Design

Project Development and Environmental Analysis

Reasonable Blowing Rock Bypass Alternatives South of SR 1500

The NCDOT will prepare an EIS for improving US 321 from SR 1500 (Blackberry Road) to US 221 in Blowing Rock. It will include an assessment of reasonable Blowing Rock bypass alternatives. If any reasonable bypass alternatives extend south of SR 1500, the EIS study area will be expanded to encompass those alternatives and no right-of-way acquisition or construction activities will take place in the comparable widening segment until preparation and review of the EIS is complete.

ACTION: The NCDOT is presently preparing an EIS for US 321 improvements from SR 1500 to US 221 in Blowing Rock. None of the reasonable alternatives for this study extends south of SR 1500.

Coordination with the National Forest Service

The necessary consultation on proposed endangered, threatened, and sensitive (PETS) species and land transfers will be conducted with the National Forest Service.

ACTION: Consultations are going on with the Forest Service and all required coordination will be completed prior to any land transfers.

Design Services/Roadside Environmental Unit

Scenic Overlooks

The straightening of curves also will leave new locations where area will be available for scenic overlooks. Opportunities to improve the ability for travelers to safely leave and enter the preferred alternative to enjoy views will be examined during final design.

ACTION: *NCDOT design personnel are aware of this commitment and will attempt to locate scenic overlooks along the preferred alternative during final design.*

McCaleb Coffey House

The NCDOT will incorporate a plan to landscape the project right-of-way across from the National Register-eligible McCaleb Coffey House into the final design. Base on this commitment, the State Historic Preservation Officer has concluded that the preferred alternative will have no adverse effect on the McCaleb Coffey House.

ACTION: A landscaping plan for the right-of-way at the McCaleb Coffey House has been completed.

Geotechnical Unit

Pyritic Shale

There is very little potential for pyritic shale in the project area. During the geotechnical investigations associated with final design, the NCDOT will screen existing slopes and rock core samples for pyritic shale. If pyritic shale is found, the NCOT will develop a plan for preventing the water quality impacts associated with its exposure and will include controls in the construction contract. Coordination with federal and state fisheries and water quality control agencies will be maintained during the design stage. The NCDOT will coordinate treatment plans with federal and state fisheries and water quality control agencies.

ACTION: Geotechnical investigations are complete for the project. No evidence of pyritic shale was found during the investigation.

Structure Design/Hydraulics Unit

Wildlife Passages

During project design, the NCOT will consider measures for making culverts more attractive to wildlife passage.

ACTION: *NCDOT design personnel are aware of this commitment and will consider incorporating measures into final culvert design to make the structures more attractive for wildlife passage.*

Division 11

Access to US Forest Service Parcels

No construction work will take place on US Forest Service parcels until a PETS survey is completed and a public road easement is secured from the Forest Services.

Commitments Developed through Permitting

Structure Design Unit/Hydraulics Unit/Division 11

A drop structure shall be installed at the outlet of the Site 5 reinforced concrete pipe to reduce the outlet velocity.

Baffles shall be installed in the reinforced concrete box culvert inlet at Site 2 in Greenfield Branch.

An extended wing wall shall be installed at the Site 2 reinforced concrete box culvert inlet to act as a retaining wall parallel to US 321.

An extended wing wall and a retaining wall shall be installed parallel to US 321 at the Site 3 reinforced concrete box culvert inlet.

Hydraulics Unit/Division 11

Energy dissipater basins shall be installed at pipe outlets to wetlands at Sites 6A and 6B.

Division 11

Instream work and land disturbance within the 25-foot wide trout buffer zone are prohibited on all streams classified as trout waters within the project are during the trout spawning seasons of October 15 through April 15 to protect the egg and fry stages of trout. (All streams on project are classified at trout waters)



DEPARTMENT OF THE ARMY WILMINGTON DISTRICT, CORPS OF ENGINEERS P.O. BOX 1890 WILMINGTON. NORTH CAROLINA 28402-1890

December 15, 2004



Regulatory Division

Action ID. 200421367

Dr. Gregory J. Thorpe, Ph.D. Environmental Management Director, PDEA N.C. Department of Transportation 1548 Mail Service Center Raleigh, NC 27699-1548

Dear Dr. Thorpe:

In accordance with the written request of July 21, 2004, and the ensuing administrative record, enclosed is a permit to authorize the discharge of fill material into waters of the United States, for construction of Section B of the US 321 widening and improvements (T.I.P. No. R-2237B), impacting Rocky Cove Creek, Greenfield Branch, Punch Camp Creek, and Mulberry Creek, from SR 1370 (Kirby Mountain Road) north to SR 1500 (Blackberry Road), northwest of Lenoir, in Caldwell County, North Carolina.

If any change in the authorized work is required because of unforeseen or altered conditions or for any other reason, the plans revised to show the change must be sent promptly to this office. Such action is necessary, as revised plans must be reviewed and the permit modified.

Carefully read your permit. The general and special conditions are important. Your failure to comply with these conditions could result in a violation of Federal law. Certain significant general conditions require that:

a. You must complete construction before December 31 2007.

b. You must notify this office in advance as to when you intend to commence and complete work.

c. You must allow representatives from this office to make periodic visits to your worksite as deemed necessary to assure compliance with permit plans and conditions.

• "Should you have questions, contact Mr. John Thomas of my Raleigh Field Office regulatory staff at telephone (919) 876-8441, extension 25.

Sincerely,

J. Kerneth

Charles R. Alexander, Jr. Colonel, U.S. Army District Engineer

Enclosures

z

Copy Furnished with enclosures:

Chief, Source Data Unit NOAA/National Ocean Service ATTN: Sharon Tear N/CS261 1315 East-West Hwy., Rm 7316 Silver Spring, MD 20910-3282

Copies Furnished with special conditions and plans:

Mr. Pete Benjamin, Field Supervisor U.S. Fish and Wildlife Service Fish and Wildlife Enhancement Post Office Box 33726 Raleigh, North Carolina 27636-3726

Mr. Ron Sechler National Marine Fisheries Service, NOAA Pivers Island Beaufort, North Carolina 28516 Mr. David Rackley National Marine Fisheries Service, NOAA 219 Fort Johnson Road Charleston, South Carolina 29412-9110

Mr. Ronald Mikulak, Chief Wetlands Section - Region IV Water Management Division U.S. Environmental Protection Agency Atlanta Federal Center 61 Forsyth Street, SW Atlanta, Georgia 30303

Mr. Doug Huggett NC Division of Coastal Management Division of Coastal Management 151-B, NC Hwy 24 Morehead CityCenter, NC 28557

Mr. William D. Gilmore, P.E. EEP Transition Manager Ecosystem Enchancement Center 1652 Mail Service Center Raleigh, NC 27699-1652

DEPARTMENT OF THE ARMY PERMIT

NC Department of Transportation

Permittee______ 200421367 Permit No. _____ USAED, Wilmington Issuing Office _____ REGULTED

DEC 1 3 2004

SULATO

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

Project Description:

Place fill material impacting approximately 889 linear feet of stream channel, 0.08 acre of open water, and 0.16 acre of wetlands, in the jurisdictional waters of the Yadkin Pee-Dee River basin and approximately 791 linear feet of stream channel, 0.05 acre of open waters, and no wetland impacts in the jurisdictional waters of the Catawba River Basin, for construction of Section B of the US 321 widening and improvements (T.I.P. No. R-2237B).

Project Location:

From SR 1370 (Kirby Mountain Road) north to SR 1500 (Blackberry Road), northwest of Lenoir, in Caldwell County, North Carolina.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on <u>December 31,2007</u>. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.

3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

ENG FORM 1721, Nov 86

EDITION OF SEP 82 IS OBSOLETE.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.

6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

snoitibnoJ IsioaqB

See enclosed sheet.

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- () Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403).
- (X) Section 404 of the Clean Water Act (33 U.S.C. 1344).
- () Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).
- 2. Limits of this authorization.
- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

, d. Design or construction deficiencies associated with the permitted work.

• •

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

a. You fail to comply with the terms and conditions of this permit.

b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).

c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

12/6/04 (PERMITTEE

NC DEPARTMENT OF TRANSPORTATION

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

CHARLES R. ALEXANDER, JR. COLONEL

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)



Alan W. Klimek, P.E. Director Division of Water Quality

October 21, 2004

Dr. Gregory J. Thorpe, PhD., Manager Project Development and Environmental Analysis Branch North Carolina Department of Transportation 1548 Mail Service Center Raleigh, North Carolina, 27699-1548

Dear Dr. Thorpe:

 Re: 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act, Proposed Widening of US 321 from SR 1370 to SR 1500 in Bailey Camp, TIP No. R-2237B Individual WQC No. 3481 Caldwell County

Attached hereto is a copy of Certification No. 3481 issued to The North Carolina Department of Transportation dated October 21, 2004. This Certification replaces the Certification issued October 5, 2004. The modification made to this Certification consists of editing Condition 1. in the Project Specific Conditions to remove any reference of Site 3 regarding baffle installation in the proposed reinforced box culvert. The revised condition reads as follows:

1. Baffles shall be installed in the reinforced concrete box culvert inlet at Site 2 in Greenfield Branch.

If we can be of further assistance, do not hesitate to contact us.

Sincerely,

Alan W. Klimek, P.E. Director

Attachments

cc: John Thomas, Army Corps of Engineers Raleigh Regulatory Field Office Mike Parker, DWQ Asheville Regional Office Central Files File Copy

Transportation Permitting Unit 1650 Mail Service Center, Raleigh, North Carolina 27699-1650 2321 Crabtree Boulevard, Suite 250, Raleigh, North Carolina 27604 Phone: 919-733-1786 / FAX 919-733-6893 / Internet: <u>http://h2o.enr.state.nc.us/ncwetlands</u>

APPROVAL OF 401 Water Quality Certification and ADDITIONAL CONDITIONS

THIS CERTIFICATION is issued in conformity with the requirements of Section 401 Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Division of Water Quality (DWQ) Regulations in 15 NCAC 2H, Section .0500, and 15 NCAC 2B .0259. This certification authorizes the NCDOT to place fill material, to excavate, and to conduct mechanized clearing in 0.16 acres of wetlands and to place fill material, culverts, and piping in 1,680 linear feet of streams in Caldwell County. The project shall be constructed pursuant to the application dated July 21, 2004, to widen US 321 from SR 1370 to SR 1500. The approved design is that submitted in your application dated July 21, 2004. The authorized impacts are as described below:

| Site | Station No. | Non- Riverine (acres) | Total (acres) |
|---------|----------------------|-----------------------------|------------------|
| Site 6A | -L-136+16 to 136+70 | 0.08 | 0.08 |
| Site 6B | -L- 137+96 to 139+46 | 0.08 | 0.08 |
| Total | | 0.16 | 0.16 |

 Table 1. Wetland Impacts in the Yadkin-Pee Dee River Basin

| Site | Station No. | Stream Impacts | Stream Type | Mitigation Required |
|------|--------------------------|---------------------|--------------------|---------------------|
| | | (linear feet) | | (linear feet) |
| Impa | cts in the Yadkin-Pee De | e River Basin | | |
| 1 | Rocky Cove Creek | 129 | Perennial | 0 |
| | –L-66+40 to 66+48 | | | |
| 2 | Greenfield Branch | 266 | Perennial | 266 |
| | –L- 77+05 to 78+18; | | | |
| | -L- 78+80 to 80+15 | | | |
| 3 | Greenfield Branch | 167 | Perennial | 167 |
| | –L- 82+15 to 82+70; | | | |
| | -L- 83+08 to 83+63 | | | |
| 4 | Greenfield Branch | 218 | Perennial | 218 |
| | –L- 91+12 to 91+40; | | | |
| | -L-91+83 to 93+10 | | | |
| 5 | UT to Puncheon Camp | 109 | Perennial | 0 |
| | Creek | | | |
| | –L- 121+92 to 122+64 | | | |
| | Impa | acts in the Catawba | River Basin | |
| 7 | UT to Right Fork | 191 | Perennial | 191 |
| | Mulberry Creek | | | |
| | –L- 293+83 to 294+90 | | | |
| 8 | UT to Left Fork | 600 | Perennial | 0 |
| | Mulberry Creek | | | |
| | -L- 324+96 to 325+82 | | | |

 Table 2. Surface Water Impacts for the Yadkin-Pee Dee and Catawba River Basins

 Site
 Station No
 Stream Impacts
 Stream Type
 Mitigation Required

| Total | 1 680 | 842 |
|-------|-------|-----|
| IUtal | 1,000 | |

The application provides adequate assurance that the discharge of fill material into the wetlands and waters of the Yadkin-Pee Dee River Basin and the Catawba River Basin in conjunction with the proposed development will not result in a violation of applicable Water Quality Standards and discharge guidelines. Therefore, the State of North Carolina certifies that this activity will not violate the applicable portions of Sections 301, 302, 303, 306, 307 of PL 92-500 and PL 95-217 if conducted in accordance with the application and conditions hereinafter set forth.

This approval is only valid for the purpose and design that you submitted in your application, as described in the Public Notice. Should your project change, you are required to notify the DWQ and submit a new application. If the property is sold, the new owner must be given a copy of this Certification and approval letter, and is thereby responsible for complying with all the conditions. If any additional wetland impacts, or stream impacts, for this project (now or in the future) exceed one acre or 150 linear feet, respectively, additional compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). For this approval to remain valid, you are required to comply with all the conditions listed below. In addition, you should obtain all other federal, state or local permits before proceeding with your project including (but not limited to) Sediment and Erosion control, Coastal Stormwater, Non-discharge and Water Supply watershed regulations. This Certification shall expire three years from the date of the cover letter from DWQ or on the same day as the expiration date of the corresponding Corps of Engineers Permit, whichever is sooner.

Condition(s) of Certification:

Project Specific Conditions

1,1

- 1. Baffles shall be installed in the reinforced concrete box culvert inlet at Site 2 in Greenfield Branch.
- 2. An extended wing wall shall be installed at the Site 2 reinforced concrete box culvert inlet to act as a retaining wall parallel to US 321.
- 3. An extended wing wall and a retaining wall shall be installed parallel to US 321 at the Site 3 reinforced concrete box culvert inlet.
- 4. A drop structure shall be installed at the outlet of the Site 5 reinforced concrete pipe to reduce the outlet velocity.
- 5. Energy dissipater basins shall be installed at pipe outlets to wetlands at Sites 6A and 6B.
- 6. Instream work and land disturbance within the 25-foot wide trout buffer zone are prohibited on all streams classified as trout waters within the project area during the trout spawning seasons of October 15 through April 15 to protect the egg and fry stages of trout.
- 7. Compensatory mitigation for impacts to streams shall be done for 842 linear feet of stream impact at a replacement ratio of 1:1. The NC Ecosystem Enhancement Program shall provide compensatory mitigation for impacts to jurisdictional streams for 842 linear feet of streams. Compensatory mitigation shall be provided for 651 linear feet of streams in the Yadkin-Pee

Dee River Basin, eight digit hydrologic unit 03040101 and for 191 linear feet of streams in the Catawba River Basin, eight digit hydrologic unit 03050101.

1.1

General Conditions of Certification:

- 8. Construction will be conducted in such a manner as to prevent a significant increase in turbidity outside the area of construction or construction-related discharge. Erosion and sediment control practices must be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices in order to assure compliance with the appropriate turbidity water quality standard.
 - a. The erosion and sediment control measures for the project must equal or exceed the proper design, installation, operation and maintenance outlined in the most recent version of the North Carolina Sediment and Erosion Control Planning and Design Manual. These devices shall be maintained on all construction sites, borrow sites, and waste pile (spoil) projects, including contractor-owned or leased borrow pits associated with the project.
 - b. For borrow pit sites, the erosion and sediment control measures must equal or exceed the proper design, installation, operation and maintenance outlined in the most recent version of the North Carolina Surface Mining Manual. The reclamation measures and implementation must comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act.
- 9. All sediment and erosion control measures shall not be placed in wetlands or waters to the maximum extent practicable. If placement of sediment and erosion control devices in wetlands and waters is unavoidable, they shall be removed and the natural grade restored after the Division of Land Resources has released the project.
- 10. If an environmental document is required, this Certification is not valid until a FONSI or ROD is issued by the State Clearinghouse. All water quality-related conditions of the FONSI or ROD shall become conditions of this Certification.
- 11. No live or fresh concrete shall come into contact with waters of the state until the concrete has hardened.
- 12. There shall be no excavation from or waste disposal into jurisdictional wetlands or waters associated with this permit without appropriate modification of this permit. Should waste or borrow sites be located in wetlands or stream, compensatory mitigation will be required since it is a direct impact from road construction activities.
- 13. Excavation of the stream crossings should be conducted in the dry, if possible. Sandbags, cofferdams, flexible pipe, or other diversion structures should be used to minimize excavation in flowing water.
- 14. Upon completion of the project, the NCDOT shall complete and return the enclosed "Certification of Completion Form" to notify DWQ when all work included in the 401 Certification has been completed. The responsible party shall complete the attached form and return it to the 401/Wetlands Unit of the Division of Water Quality upon completion of the project.

15. Placement of culverts and other structures in waters, streams, and wetlands must be placed below the elevation of the streambed to allow low flow passage of water and aquatic life unless it can be shown to DWQ that providing passage would be impractical. Design and placement of culverts and other structures including temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands or streambeds or banks, adjacent to or upstream and down stream of the above structures. The applicant is required to provide evidence that the equilibrium shall be maintained if requested in writing by DWQ.

4 1 1

· •

- 16. During the construction of the project, no staging of equipment of any kind is permitted in waters of the U.S., or protected riparian buffers.
- 17. All temporary fills in wetlands and surface waters shall be removed upon completion of the project. In addition, the post-construction removal of any temporary bridge structures or fill will need to return the project site to its preconstruction contours and elevations. The revegetation of the impacted areas with appropriate native species will be required.
- 18. Riparian vegetation must be reestablished within the construction limits of the project by the end of the growing season following completion of construction.
- 19. Any riprap used must not interfere with thalweg performance and aquatic life passage during low flow conditions.
- 20. All mechanized equipment operated near surface waters must be regularly inspected and maintained to prevent contamination of stream waters from fuels, lubricants, hydraulic fluids, or other toxic materials.
- 21. Discharging hydroseed mixtures and washing out hydroseeders and other equipment in or adjacent to surface waters is prohibited.
- 22. Two copies of the final construction drawings shall be furnished to NCDWQ prior to the preconstruction meeting. Written verification shall be provided that the final construction drawings comply with the attached permit drawings contained in the application dated May 11, 2004.
- 23. The outside buffer, wetland or water boundary located within the construction corridor approved by this authorization shall be clearly marked by orange fabric fencing prior to any land disturbing activities.
- 24. NCDOT, and its authorized agents, shall conduct its activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with §303(d) of the Clean Water Act) and any other appropriate requirements of State law and Federal law. If DWQ determines that such standards or laws are not being met (including the failure to sustain a designated or achieved use) or that State or federal law is being violated, or that further conditions are necessary to assure compliance, DWQ may reevaluate and modify this certification to include conditions appropriate to assure compliance with such standards and requirements in accordance with 15A NCAC 2H.0507(d). Before modifying the certification, DWQ shall notify NCDOT and the US Army Corps of Engineers, provide public notice in accordance with 15A NCAC 2H.0503 and provide opportunity for public hearing in accordance with 15A NCAC 2H.0504. Any new or revised conditions shall be provided to NCDOT in

writing, shall be provided to the United States Army Corps of Engineers for reference in any permit issued pursuant to Section 404 of the Clean Water Act, and shall also become conditions of the 404 Permit for the project.

1...

- 25. A copy of this Water Quality Certification shall be posted on the construction site at all times. In addition, the Water Quality Certification (and all subsequent modifications, if any, shall be maintained with the Division Engineer and the on-site project manager.
- 26. Culverts that are less than 48-inch in diameter should be buried to a depth equal to or greater than 20% of their size to allow for aquatic life passage. Culverts that are 48-inch in diameter or larger should be buried at least 12 inches below the stream bottom to allow natural stream bottom material to become established in the culvert following installation and to provide aquatic life passage during periods of low flow. These measurements must be based on natural thalweg depths.

Violations of any condition herein set forth may result in revocation of this Certification and may result in criminal and/or civil penalties. This Certification shall become null and void unless the above conditions are made conditions of the Federal 404 and/or Coastal Area Management Act Permit. This Certification shall expire upon the expiration of the 404 permit.

If this Certification is unacceptable to you have the right to an adjudicatory hearing upon written request within sixty (60) days following receipt of this Certification. This request must be in the form of a written petition conforming to Chapter 150B of the North Carolina General Statutes and filed with the Office of Administrative Hearings, P.O. Box 27447, Raleigh, N.C. 27611-7447. If modifications are made to an original Certification, you have the right to an adjudicatory hearing on the modifications upon written request within sixty (60) days following receipt of the Certification. Unless such demands are made, this Certification shall be final and binding.

This the 5th day of October 2004

DIVISION OF WATER QUALITY

Alan W. Klimek, P.E. Director

WQC No. 3481

1. COMPLIANCE WITH PLANS

. . 1

All work must be performed in strict compliance with the attached plans, which are a part of this permit. Any modification to the permit plans must be approved by the USACE prior to implementation.

2. COMPLIANCE WITH SPECIAL CONDITIONS

Failure to institute and carry out the details of the following special conditions, below, will result in a directive to cease all ongoing and permitted work within waters and/or wetlands associated with the permitted project, or such other remedies and/or fines as the District Engineer or his authorized representatives may seek.

3. CONSTRUCTION PLANS

The permittee will ensure that the construction design plans for this project do not deviate from the permit plans attached to this authorization. Written verification shall be provided that the final construction drawings comply with the attached permit drawings prior to any active construction in waters of the United States, including wetlands. Any deviation in the construction design plans will be brought to the attention of the Corps of Engineers, Raleigh Regulatory Field Office prior to any active construction in jurisdictional waters including jurisdictional wetlands.

4. PRECONSTRUCTION MEETING

The permittee shall schedule a preconstruction meeting between its representatives, the contractor's representatives, and the Corps of Engineers, Raleigh Regulatory Field Office, NCDOT Regulatory Project Manager, prior to any work within jurisdictional waters including jurisdictional wetlands to ensure that there is a mutual understanding of all of the terms and conditions contained within this Department of the Army Permit. The permittee shall provide the USACE, Raleigh Regulatory Field Office, NCDOT Regulatory Project Manager, with a copy of the final plans at least two weeks prior to the preconstruction meeting along with a description of any changes that have been made to the project's design, construction meeting for a time when the USACE and North Carolina Division of Water Quality (NCDWQ) Project Managers can attend. The permittee shall invite the Corps and NCDWQ Project Managers a minimum of thirty (30) days in advance of the scheduled meeting in order to provide those individuals with ample opportunity to schedule and participate in the required meeting.

. 5. CONTRACTOR COMPLIANCE

. . '

The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this permit, and any authorized modifications. A copy of this permit, and any authorized modifications, including all conditions, shall be available at the project site during construction and maintenance of this project.

6. CONSTRUCTION DRAWINGS

Prior to commencing construction within jurisdictional waters of the United States for any portion of the proposed highway project, the permittee shall forward the latest version of project construction drawings to the Corps of Engineers, Raleigh Regulatory Field Office NCDOT Regulatory Project Manager. Half-size drawings will be acceptable.

7. ACTIVITIES NOT AUTHORIZED

Except as authorized by this permit or any USACE approved modification to this permit, no excavation, fill, or mechanized land-clearing activities shall take place at any time in the construction or maintenance of this project, within jurisdictional waters including jurisdictional wetlands, or shall any activities take place that cause the degradation of jurisdictional waters including jurisdictional wetlands. In addition, except as specified in the plans attached to this permit, no excavation, fill or mechanized land-clearing activities shall take place at any time in the construction or maintenance of this project, in such a manner as to impair normal flows and circulation patterns within, into, or out of jurisdictional waters including jurisdictional wetlands. This permit does not authorize temporary placement or double handling of excavated or fill material within jurisdictional waters including including of excavated area.

8. BORROW AND WASTE

To ensure that all borrow and waste activities occur on high ground and do not result in the degradation of adjacent wetlands and streams, except as authorized by this permit, the permittee shall require its contractors and/or agents to identify all areas to be used to borrow material, or to dispose of dredged, fill, or waste material. The permittee shall provide the USACE with appropriate maps indicating the locations of proposed borrow or waste sites as soon as the permittee has that information. The permittee will coordinate with the USACE before approving any borrow or waste sites that are within 400 feet of any streams or wetlands. All jurisdictional wetland lines on borrow and waste sites shall be verified by the Corps of Engineers and shown on the approved reclamation plans. The permittee shall ensure that all such areas comply with the **preceding condition** of this permit, and shall require and maintain documentation of the location and characteristics of all borrow and disposal sites associated with this project. This ··· information will include data regarding soils, vegetation and hydrology sufficient to clearly demonstrate compliance with the **preceding condition**. All information will be available to the USACE upon request. NCDOT shall require its contractors to complete and execute reclamation plans for each waste and borrow site and provide written documentation that the reclamation plans have been implemented and all work is completed. This documentation will be provided to the Corps of Engineers within 30 days of the completion of the reclamation work.

9. REPORTING OF VIOLATIONS

The permittee will report any violation of these conditions or violations of Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act in writing to the Wilmington District, U. S Army Corps of Engineers, within 24 hours of the permittee's discovery of the violation.

10. SEDIMENTATION AND EROSION CONTROL MEASURES

The permittee shall use appropriate sediment and erosion control practices which equal or exceed those outlined in the most recent version of the "North Carolina Sediment and Erosion Control Planning and Design Manual" to assure compliance with the appropriate turbidity water quality standard. Erosion and sediment control practices must be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices in order to assure compliance with the appropriate turbidity water quality standards. Additionally, the project must remain in full compliance with all aspects of the Sedimentation Pollution Control Act of 1973 (North Carolina General Statutes Chapter 113A Article 4).

Adequate sedimentation and erosion control measures must be implemented prior to any ground disturbing activities to minimize impacts to downstream aquatic resources. These measures must be inspected and maintained regularly, especially following rainfall events. All fill material must be adequately stabilized at the earliest practicable date to prevent sediment from entering into adjacent waters or wetlands.

The permittee shall remove all sediment and erosion control measures placed in wetlands or waters, and shall restore natural grades in those areas, prior to project completion.

During the clearing phase of the project, heavy equipment must not be operated in surface waters or stream channels. Temporary stream crossings will be used to access the opposite sides of stream channels. All temporary diversion channels and stream crossings will be constructed of nonerodable materials. Grubbing of riparian vegetation will not occur until immediately before construction begins on a given segment of stream channel.

No fill or excavation for the purposes of sedimentation and erosion control shall occur within jurisdictional waters, including wetlands, unless it is included on the plan drawings and specifically authorized by this permit.

· 11. STORM WATER MANAGEMENT

NCDOT shall not discharge stormwater, including bridge deck drainage, directly to streams, but shall discharge the stormwater through buffer areas or retention basins, except at sites that are not practical due to necessary rock catchment areas including shoulder berm gutters and retaining walls. The exempt sites are identified on the attached construction plans at station numbers 71+00, 83+50, 123+00, 323+00, and 325+00.

12. CULVERTS

. . '

All authorized culverts will be installed to allow the passage of low stream flows and the continued movement of fish and other aquatic life as well as to prevent headcutting of the streambed. For all box culverts and for pipes greater than 48 inches in diameter, the bottom of the pipe will be buried at least one foot below the bed of the stream unless burial would be impractical and the Corps of Engineers has waived this requirement. For culverts 48 inches in diameter or smaller, the bottom of the pipe must be buried below the bed of the stream to a depth equal to or greater than 20 percent of the diameter of the culvert. Design and placement of culverts and other structures including temporary erosion control measures shall not be conducted in a manner that may result in disequilibrium of wetlands or streambeds or banks, adjacent to, upstream or downstream of the structures. In order to allow for the continued movement of bed load and aquatic organisms, existing stream channel widths and depths will be maintained at the inlet and outlet ends of culverts. Riprap armoring of streams at culvert inlets and outlets shall be minimized above the ordinary high water elevation in favor of bioengineering techniques such as bank sloping, erosion control matting and revegetation with deep-rooted, woody plants.

13. WET CONCRETE

The permittee shall take measures to prevent live or fresh concrete from coming into contact with any surface waters until the concrete has hardened.

14. POLLUTION SPILLS

All mechanized equipment will be regularly inspected and maintained to prevent contamination of jurisdictional waters including jurisdictional wetlands from fuels, lubricants, hydraulic fluids, or other toxic materials. No equipment staging or storage of construction material will occur in wetlands. Hydro-seeding equipment will not be discharged or washed out into any surface waters or wetlands. In the event of a spill of petroleum products or any other hazardous waste, the permittee shall immediately report it to the N.C. Division of Water Quality at (919) 733-5083 or (800) 662-7956 and provisions of the North Carolina Oil Pollution and Hazardous Substances Control Act will be followed.

· 15. CLEAN FILL MATERIAL

. . (

Unless otherwise authorized by this permit, all fill material placed in jurisdictional waters including jurisdictional wetlands shall be generated from an upland source and will be clean and free of any pollutants except in trace quantities. Metal products, organic materials (including debris from land clearing activities), or unsightly debris will not be used.

16. OTHER AUTHORIZATIONS

This Department of the Army permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.

17. PROPERTY RIGHTS

This permit does not grant any property rights or exclusive privileges.

18. GOVERNMENT LIABILITY

In issuing this permit, the Federal Government does not assume any liability for:

Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

Damages to the permitted project or uses thereof as a result of current or future Federal activities initiated on behalf of the general public.

Damages to other permitted or un-permitted activities or structures caused by the authorized activity.

Design and construction deficiencies associated with the permitted work.

Damage claims associated with any future modification, suspension, or revocation of this permit.

19. TEMPORARY FILLS

The temporary diversion structures at L-stations 66+40, 77+05, 82+15, 91+12, 121+92, 293+83, and 324+96 shall be constructed in accordance with Section 5.2.2 of the North Carolina Department of Transportation "Best Management Practices for Construction and Maintenance Activities" dated August 2003. All temporary fill shall be removed in its entirety upon completion of the construction at that site.

· 20. MORATORIUMS

. . '

In-stream work and land disturbance within the 25-foot wide buffer zone to protect the egg and fry stages of trout are prohibited during the trout spawning seasons of October 15 through April 15.

21. MITIGATION

Compensatory mitigation for the unavoidable impacts to 889 linear feet of stream channel and 0.16 acre of wetlands, in the jurisdictional waters of the Yadkin Pee-Dee River Basin (HU 03040101) and 791 linear feet of stream channel impacts in the jurisdictional waters of the Catawba River Basin (HU 03050101) shall be provided by the Ecosystem Enhancement Program (EEP), as outlined in the letter dated September 1, 2004, from William D. Gilmore, EEP Transition Manager. Pursuant to the EEP Memorandum of Agreement (MOA) between the State of North Carolina and the US Army Corps of Engineers signed on July 22, 2003, the EEP will provide 1778 linear feet of restoration equivalent cool water stream channel stream channel and 0.32 acre of non-riverine wetlands in the Yadkin Pee-Dee River Basin (HU 03040101) and 1582 linear feet of restoration equivalent cool water stream channel in the Catawba River Basin (HU 03050101) by one year of the date of this permit. For wetlands, a minimum of 1:1 (impact to mitigation) must be in the form of wetland restoration. The NCDOT shall, within 30 days of the issue date of this permit, certify that sufficient funds have been provided to EEP to complete the required mitigation, pursuant to Paragraph V. of the MOA









| | | | | Stream | Design | , | | | | | | | | • | | • | | | | 1. | | - | | | 0.0 | • | | • | | | ÷ | |
|---|-------------------------------|-----------------------|------------|---------------------------|-------------------|--------|----------------|------------------|--------|------------------|-------------------|--------|------------------|-------------------|--------|---------------------|--------|------------------|------------------|-------------|----------------|---------------------|-------------|---------|--------|------------------------------|----------------------|------------------|-----------|------------------------------|---------------------------------------|--------|
| | - | DAME | | | Impacted (#) | 128.7 | | 118.5 | 147.1 | : | 102.2 | .65.1 | | 39.9 | 178.1 | | 108.6 | | | | 191.4 | | 600.4 | 10000 | 0.0001 | TION . | | | | 78) | NIAIN HD.) ID.) | • |
| | ··· · | SURFACE WATED IMPACTS | | Temp. Fill | (ac) | | | | | , | | | | | | • | | | | · · | | | | | | N.C. DEPT. OF TRANSPORTATION | DIVISION OF HIGHWAYS | CALDWELL COLINEY | | PROJECT 8. T731303 (R-2237B) | TO SR 1600 (BLACKBERRY RD.) | |
| - | | SURFAC | | Fili In SW | (ac) | | | | | | | | | | • | | | | | | | | | | - | .C. DEPT. OF | DIVISION C | | | PROJECT 8.T | TO SR 1600 (B) | |
| | IARY | | | Fill In SW (Natural) | (ac). | 0.0148 | | 0.0123 | 0.0161 | | 1010.0 | 0.0060 | - 2000 0 | 0.002/ | c010.0 | 0,0040 | etonia | · | | | 0.0088 | • | 0.0412 | 0.1274 | | N | •• • | | •••. • | 100 0 11 | | • • |
| | WETLAND PERMIT IMPACT SUMMARY | Ţ, | Mechanized | Clearing (Method III) | (ac) | | ÷ | | | | T | | | | | | · | 0.0043 | 0.0059 | | | | | 0.0102 | | • | | •. • • • | · · | | • • • • • • • • • • • • • • • • • • • | |
| | RMIT IMP | WETLAND IMPACTS | | Excavation In Wetlands | (ac) | | | | | | | | | | | | ŀ | 0.0260 | 0.0216 | | | | | 0.0476 | | | • | | | | | |
| | LAND PEI | WETLAND | | Temp. Fill In Wetlands | (ac) | | | | | | | | | | | | | | | | | | | . 0.000 | | : | | | ÷ . | : | · . | |
| | WET | | | Fijl In Wetlands | (ac) | | ^ | | | | | | | | | | | 0.0480 | 0.0538 | | | | | 0.1018 | | | | • | | ••• | | |
| | | • | į | Sifucture Size / Type | 1 @ 40" DCD | | 1 @ 0' | | | 1 @ 8' x 5' HCBC | 1 @ 8' x 5' RCBC | | 1 @ 72" RCP | . 1 @ 72" RCP | | 1 @ 36" RCP | | 1 @ 36" CSP | 1 @ 24" CSP | | 1 @ 24 CSP | 1 00 60" SPP / | 1 @ 60" CSP | | | | | | | | • | |
| | | - | Chilos | (From/To) | -L- 66+40 / 66+83 | | -L-77+05/78+18 | -L- 78+80/ 80+15 | | -L- 82+15/ 82+70 | -L- 83+08 / 83+63 | | -L- 91+12/ 91+40 | -L- 91+85 / 93+10 | • • | -L- 121+92 / 122+64 | | -L-136+16/136+70 | -L-13/+96/139+46 | 00100100100 | 293+63/ 294+90 | -L- 324+96 / 325+82 | | • | | | | •• | | | · · | • |
| | | | Site | o Z | - | | 5 | | | 9 | | • | 4 | . : | | 2 | • | 6A | 80 | · r | + | 8 | | TOTALS: | | | | •. | | | • | • |

.

| | Property Owner L | ist |
|-------------|--|---|
| Site Number | Name | Address |
| 1 | Jessie Ford And Wife, June Ford | 5725 Waterfall Rd. Lenoir, NC 28645 |
| | Gene D. Jensen And Wife, Olga D. Jensen | P.O. Box 1134 Blowing Rock, NC 28605 |
| 2 | Johnny J. Bishop And Wife, Lillian S. Bishop | 14895 W NC Hwy 268 Ferguson, NC 28624 |
| | Wayne W. Price And Wife, Dianna R. Price | 4184 Blowing Rock Blvd. Lenoir, NC 28645 |
| 3 | James S. Story And Robert Money | 2222 Bob Money Lane Lenoir, NC 28645 |
| 3 | Harold D. Patrick And Wife, Hope M. Patrick | 4233 Blowing Rock Blvd. Lenoir, NC 28645 |
| | Harold D. Patrick And Wife, Hope M. Patrick | 4233 Blowing Rock Blvd. Lenoir, NC 28645 |
| 4 | Donald Wade Bentley | 221 Driver Ave. Murphy, NC 28905 |
| 5 | Gerald T. Brookshire And Wife, Irene Brookshire | RT 8 Box 233 Lenoir, NC 28645 |
| 6A | Troy P. Bolick And Wife, Marlene Bolick | RT 8 Box 231 Lenoir, NC 28645 |
| | Troy P. Bolick And Wife, Marlene Bolick | RT 8 Box 231 Lenoir, NC 28645 |
| | , , | · · · · · · · · · · · · · · · · · · · |
| | | N.C. DEPT. OF TRANSPORTATION DIVISION OF HIGHWAYS |
| | | CALDWELL COUNTY PROJECT: 8.T731303 (R-2237B) U.S. 321 DM S.R. 1370 (KIRBY MOUNTAIN RD) |

Ŀ

1.1.7.1

.

.

| | P | roject No. 8.T731303 (| (R-2237B) |
|---|-------------|------------------------|---|
| | | Property Owner Li | ist |
| - | Site Number | Name | Address |
| | 7 | Alan Bormuth | 3127 Port Street Morganton, NC 28655 |
| | 8 | J. Earl Tindel | P.O. Box 746 Fancaster, SC 29720 |
| | | | |
| | | | |
| • | | • | |
| | | | |
| | | | |
| • | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | N.C. DEPT. OF TRANSPORTATION DIVISION OF HIGHWAYS |
| | 1 | FRO | CALDWELL COUNTY PROJECT: 8.T731303 (R-2237B) U.S. 321 DM S.R. 1370 (KIRBY MOUNTAIN RD) TO S.R. 1600 (BLACKBERRY RD) |



























