

North Carolina Department of Transportation
PROJECT ENVIRONMENTAL CONSULTATION FORM
I.D. NO. R-2707C

I. GENERAL INFORMATION

- a. Consultation Phase: Right of Way
- b. Project Description: US 74 Shelby Bypass From West of NC 226 to West of NC 150, Cleveland County
- c. Federal Project: NHF-0074(152)
WBS: 34497.2.4
- d. Document Type: Draft Environmental Impact Statement 10/01/98
Date
Final Environmental Impact Statement 1/25/08
Date
Record of Decision 12/01/08
Date

II. CONCLUSIONS

The above environmental document has been reevaluated as required by 23 CFR 771. It was determined that the current proposed action is essentially the same as the original proposed action. Proposed changes if any are noted below in Section III. It has been determined that the anticipated social, economic, environmental impacts were accurately described in the above referenced document(s) unless noted otherwise herein. Therefore, the original Administration Action remains valid.

III. CHANGES IN PROPOSED ACTION AND ENVIRONMENTAL CONSEQUENCES

The attached memorandum, dated September 11, 2014, addresses the water resources and the protected species potentially impacted by the project and serves to update the referenced FEIS and ROD. All other water resource classifications for R-2707C have not changed since the FEIS and ROD were completed. Neither High Quality Waters (HQW), Water Supplies (WS-I or WS-II), nor Outstanding Resource Waters (ORW) occur within 1.0 mile of the project area. No surface waters in the project area are designated as a North Carolina Natural or Scenic River, or as a national Wild and Scenic River. The First Broad River and Hickory Creek are not listed on DWQ's 303(d) list

(2012) of impaired waters in North Carolina nor are any listed within one mile of the project.

As of August 7, 2014, the United States Fish and Wildlife Service (USFWS) lists one federally protected species for Cleveland County (Table 1). In 1998, Dwarf-flowered heartleaf was positively identified on the project site. A Biological Assessment (BA) from NCDOT was issued in January 2004 with a subsequent Biological Opinion issued by the USFWS in May 2004.

At the request of the USFWS, a revised BA was submitted on August 3, 2012. An Amendment to the 2004 Opinion was issued on November 9, 2012 (attached). The November 9, 2012 Biological Opinion concludes the “total range wide numbers of dwarf-flowered heartleaf plants and known occurrences have not changed significantly since the issuance of the 2004 Opinion”. The attached Biological Opinion states “After reviewing the current status of the dwarf-flowered heartleaf, the environmental baseline for the action area, the effects of the proposed highway projects, the cumulative effects, and the proposed conservation measures, it is our biological opinion that the project as proposed is not likely to jeopardize the continued existence of the dwarf-flowered heartleaf.”

The bald eagle has been delisted from the Endangered Species Act as of August 8, 2007 and is protected under the Bald and Golden Eagle Protection Act. Suitable habitat for the bald eagle does exist in the project study area.

Since the FEIS was approved and the ROD was accepted by FHWA in 2008, interchanges at NC 150 and NC 180 were evaluated. Roundabout intersections are proposed at these locations and no additional right of way is required as a result of these design changes. The NC 226 interchange will be designed and constructed under R-2707B.

A US Fish and Wildlife Service proposal for listing the Northern Long-eared Bat (*Myotis septentrionalis*) as an Endangered species was published in the Federal Register in October 2013. The listing will become effective on or before April 2015. Furthermore, this species is included in USFWS’s current list of protected species for Cleveland County. NCDOT will continue to coordinate with USFWS.

The October 2010 Design Noise Report was reviewed in September 2014 and found to be in compliance with the 2011 NCDOT Traffic Noise Abatement Policy. The findings and conclusions of the report are still valid and remain unchanged.

IV. LIST OF SPECIAL PROJECT COMMITMENTS

See the attached Project Commitments, Greensheet, for the environmental commitments developed during the planning and design process of this project.

V. COORDINATION

Project Development and Environmental Analysis Branch personnel have discussed current project proposals with others as follows:

Design Engineer:	<u>Andrew P Young, P.E.</u>	<u>9/10/2014</u> Date
FHWA Engineer:	<u>Mitch Batuzich</u>	<u>8/14/2014</u> Date
Environ. Specialist:	<u>Jeffery Hemphill</u>	<u>9/8/2014</u> Date
Geotechnical Unit	<u>Eric Williams, P.E.</u>	<u>9/22/2014</u> Date
Structures Engineer:	<u>Laura Sutton, P.E.</u>	<u>8/14/2014</u> Date
Hydraulics Engineer:	<u>Charles Smith, P.E.</u>	<u>8/14/2014</u> Date
Roadside Environmental:	<u>Mark Staley</u>	<u>8/14/2014</u> Date
Community Studies:	<u>Harrison Marshall</u>	<u>9/11/2014</u> Date
Traffic Noise & Air Quality:	<u>Greg Smith</u>	<u>9/15/2014</u> Date

VI. NCDOT CONCURRENCE

Marshall Edwards
Marshall Edwards, Project Manager
Project Development and Environmental Analysis Unit

9/22/14

Date

Stacy Oberhausen
Stacy Oberhausen, P.E., Group Leader
Project Development and Environmental Analysis Unit

09-22-2014

Date

VII. FHWA CONCURRENCE

Michael V. Fothergill
Federal Highway Administration
Division Administrator

9-22-14
Date

Project Commitments

US 74 Shelby Bypass

Federal-Aid No. NHF-0074(152)
WBS Number 34497.1.2
TIP Project No. R-2707
Cleveland County, North Carolina

Current status, changes, or additions to the Project Commitments as shown in the environmental document for the project are printed in *italics*.

In addition to the Section 404 Conditions, Regional Conditions, State Consistency, NCDOT's guidance for *Best Management Practices for the Protection of Surface Waters*, General Certification Conditions, and Section 401 Conditions of Certification, NCDOT has agreed to the following special commitments:

Project Development and Environmental Analysis Unit

1. Stream Relocations and Modifications. Stream relocations or modifications will be coordinated with the US Fish and Wildlife Service (USFWS), US Army Corps of Engineers (COE), the North Carolina Department of Environment and Natural Resources, Division of Water Quality (DWQ) and the North Carolina Wildlife Resources Commission (WRC) in accordance with the Fish and Wildlife Coordination Act [72 Stat. 563, as amended; 16 USC 661 et seq. (1976)]. An on-site stream mitigation review will be held with the COE, the USFWS, the WRC, and the DWQ. The assessment will determine where on-site stream mitigation is possible. Bioengineering techniques will be applied to relocated streams. These techniques will result in meandering streams with riffles and pools. Native vegetation will be used to stabilize banks and root wads will be used instead of rip-rap as appropriate. A 2:1 off-site compensatory mitigation ratio will be required unless an on-site stream is being relocated via natural stream design techniques; the latter will be at a 1:1 stream mitigation ratio. Stream mitigation (i.e., enhancement, preservation) adjacent to the project must still be completed at a 2:1 mitigation ratio if the mitigation is not an on-site natural stream design relocation. Based on the preliminary design for this project, two stream relocations will be required:
 - A stream relocation will be required for the tributary of Buffalo Creek between SR 2063 and the Light Oak community. An approximately 950-foot segment of this stream will require relocation, most likely to the east of its existing location.
 - A stream relocation will be required just to the west of Lithia Springs Road for a tributary of the First Broad River. This relocation is approximately 1,100 feet in length, and will be to the north of the existing stream bed.

Action: This commitment applies to Section C. A base ditch will be constructed with coordination with the regulatory agencies early in the permitting process.

2. Stream and Wetland Mitigation Plans. A comprehensive mitigation plan will be coordinated with the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, North Carolina Department of

Environment and Natural Resources, Division of Water Quality, and North Carolina Wildlife Resources Commission.

3. Future Air Quality. Any future air quality analysis for this project will include a review of vehicle-mix percentages, given the industrial nature of portions of the project area.

Action: An Addendum to the Air Quality Analysis can be found in the 2008 Record of Decision and remains valid.

4. ~~Transplant of Dwarf Flowered Heartleaf Plants. The North Carolina Plant Conservation Program (NCP) will be notified if or when dwarf flowered heartleaf (DFHL) plants will be lost to construction. A qualified botanist from that organization or a designated representative will be allowed to transplant, if desired, any of the plants that would be lost to a different area of protection.~~

Action: This commitment has been dropped as a Conservation Measure in the Amendment to the Biological Opinion (BO) issued November 9, 2012.

5. Dwarf-Flowered Heartleaf Monitoring. The dwarf-flowered heartleaf sites in the right-of-way will be monitored annually for five years to determine their stability and to detect any construction effects (positive or negative) which have not been anticipated (increased light, hydrology changes, etc.) and efforts will be made to control exotics.

Action: Conservation Measure 5 from the Amendment to the BO replaces this commitment. See Attachment.

6. Dwarf-Flowered Heartleaf Report. A written report on dwarf-flowered heartleaf monitoring and management efforts will be provided yearly until the project is completed

Action: Conservation Measure 5 from the Amendment to the BO replaces this commitment. See Attachment.

7. Dwarf-Flowered Heartleaf Conservation Easements. Written documentation will be provided to the US Fish and Wildlife Service and to the North Carolina Natural Heritage Program regarding any successful efforts to obtain conservation easements on dwarf-flowered heartleaf sites 8, 9, 12, 13, 24, 25, 26, 30, 32, 33, 34, 35, and 43.

Action: Conservation Measure 4 from the Amendment to the BO replaces this commitment. See Attachment.

8. Wetlands and Streams Re-Verification. Wetlands and stream information will be re-verified during the Section 404 permit application process.

Action: Wetlands and stream information was re-verified on November 30, 2009. Wetlands and stream information will be re-verified before project Let.

9. Indirect and Cumulative Effects Analysis. A supplemental Indirect and Cumulative Effects analysis will be performed prior to construction.

Action: An Indirect and Cumulative Effects (ICE) and Land Use Scenario Assessment (LUSA) was completed on October 2, 2009. The 2009 ICE and LUSA are sufficient for the permit application, per review in September 2014.

Project Development and Environmental Analysis Unit, Structure Design Unit, Hydraulics Unit, Division 12

1. Brushy Creek. The following measures will be implemented at the Brushy Creek crossing to minimize both short-term construction impacts and long-term impacts:
- Trees will be cut at the base to create root wads to help stabilize the banks.
 - During final design, the bridges will be designed with sufficient length to allow for wildlife passage. This will be coordinated with USFWS.
 - Deck drainage will not be released directly into the waterway.

Action: Per January 2006 coordination with USFWS, the bridges provide sufficient length to allow for wildlife passage. Coordination with the USFWS will be conducted as a part of the permitting process.

2. First Broad River. The following measures will be implemented at the First Broad River crossing to minimize both short-term construction impacts and long-term impacts:
- A temporary causeway or work bridge will be constructed.
 - A drainage system will be utilized on the bridge for stormwater runoff.
 - Coordination will be conducted with the local water supply administrator.
 - Hazardous spill basins will be utilized.
 - Vegetation will be left in place as much as is practicable.
 - Deck drainage will not be released directly into the waterway.

3. Stream 4-13 and DFHL Sites 10, 11 and 12. During culvert design and construction, consideration will be given to minimizing disturbance of Stream 4-13 and dwarf-flowered heartleaf sites #10, 11, and 12 - including minimizing clearing, minimizing rip rap on the stream banks, and using native vegetation to revegetate the stream banks.

Action: DFHL Sites 10 and 11 will incur direct effects from project construction. Avoidance and minimization measures including reduced sloped stake limits and the use of native vegetation can be found in the October 2012 Amended Biological Assessment. NCDOT will attempt to enter into conservation easements with access points for all or portions of several DFHL Sites, including Site 12.

4. Cemeteries. Impacts to cemeteries will be avoided and/or minimized to the extent practicable during the final design phase of the project. If required, graves will be relocated according to state guidelines.

Action: Human remains have been identified, removed, and relocated for impacted grave sites within the Wright-Bostic cemetery (removed December 2011).

The Eskridge Grove and Poston Cemeteries are located with Section B. Efforts are being made to avoid impacts to the Eskridge Grove cemetery (Archaeological site number 31CL51**). The Poston Cemetery will incur impacts (31CL63**).

5. Hamilton-McBrayer Farm. Along the existing section of US 74 at the Hamilton-McBrayer Farm, widening will be to the north (away from the property). A service road will be added, extending from Broadway Road, all within existing right-of-way, to service the trailers in the mobile home park to the north and west of the Hamilton-McBrayer Farm. This will comply with the conditions set forth in the NC State Historic Preservation Office effects concurrence form for this historic property, and will ensure that the effect to the Hamilton-McBrayer Farm will not be adverse.

Action: A service road has been added extending from Broadway Road, within the existing right of way. A temporary easement is required on Broadway Road, resulting in No Adverse Effect on the property.

6. Wildlife Passage. During final design, the bridges over Brushy Creek will be designed with sufficient length to allow for wildlife passage. This will be coordinated with USFWS during design.

Action: Per January 2006 coordination with USFWS, the bridges provide sufficient length to allow for wildlife passage. Coordination with the USFWS will be conducted early in the permitting phase.

7. Geodetic Markers. The North Carolina Geodetic Survey will be notified prior to construction to allow ample time for relocation of any affected geodetic markers.

Project Development and Environmental Analysis Unit, Division 12, Right-of-Way Branch

1. Dwarf-Flowered Heartleaf Mitigation Plan. A plan to mitigate impacts to the dwarf-flowered heartleaf will be developed in consultation with USFWS and WRC. Mitigation efforts will be performed by qualified persons and could include transplanting the vegetative portions of plants from existing sites to preselected, approved alternate sites, dispersing seed, and/or acquiring existing sites for preservation.

Action: Conservation Measures 3,4,5,6 and 8 from the Amendment to the BO replace this commitment. See Attachment

Project Development and Environmental Analysis Unit, Division 12

1. Street Closings. Any street closings will be coordinated with fire, police, and EMS personnel.

Project Development and Environmental Analysis Branch, Roadway Design Unit, Hydraulics Unit

1. Noise Barriers. In areas of impacted noise receptors where abatement measures have been considered and found not to be reasonable, a vegetative barrier will be considered for psychological and aesthetic screening.
2. Farmland. Efforts will be made to minimize impacts to farmlands during final design, including crossing of farm fields along property boundaries wherever possible to avoid bisecting farm operations.

3. Lithia Springs. Impacts to Lithia Springs will be avoided and/or minimized to the extent practicable during the final design phase of the project. A study of the impacts to the underground water table due to road grading operations at Lithia Springs will be undertaken during final design.

Action: A study will be completed by the Geotechnical Unit prior to the construction consultation.

Project Development and Environmental Analysis Branch, Geotechnical Engineering Unit, Right-of-Way Branch

1. Hazardous Materials Sites. Should the Selected Alternative impact any hazardous material site or UST, a Preliminary Site Assessment will be performed prior to right-of-way acquisition to determine the existence and/or extent of any contamination. These assessments will also be used by NCDOT to estimate the associated clean-up costs.

Action: No hazardous materials sites exist within the project limits.

Project Development and Environmental Analysis Unit, Roadway Design Unit, Division 12, Right-of-Way Branch

1. Protection of Dwarf-Flowered Heartleaf Sites. Dwarf-flowered heartleaf sites outside of the construction limits of the project in areas where NCDOT owns the property or has a construction easement will be protected and will not be disturbed during construction. Those sites will be left forested and will be protected in perpetuity. The sites will remain on the design plans and will be labeled as sensitive areas.

Action: Conservation Measures 2,3,4,6 and 8 from the Amendment to the BO replace this commitment. See Attachment.



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PAT L. MCCRORY
GOVERNOR

ANTHONY J. TATA
SECRETARY

September 11, 2014

Memorandum To: Stacy Oberhausen, P.E., Unit Head
Western Region Consultant Engineering Unit

From: Jeff Hemphill, Environmental Specialist
Natural Environment Project Management Unit

Subject: Water resources and protected species review for the preparation of a Federal Highway Administration (FHWA) Right of Way Consultation Addendum for the US 74 Shelby Bypass, from west of NC 226 to east of NC 150; Cleveland County; TIP No. R-2707(C); State Project No. 8.1801001; F.A. Project No. NHF-74(14).

References: Record of Decision (ROD) approved December 1, 2008
Final Environmental Impact Statement (FEIS) approved January 25, 2008.
A Biological Assessment for *Hexastylis naniflora* issued January 2004.
A Biological Opinion for *Hexastylis naniflora* issued May 2004.
Right of Way Consultation submitted February 16, 2010
Revised Biological Assessment submitted August 3, 2012
Right of Way Consultation August 14, 2012

The following memorandum provides information to assist in the preparation of a FHWA Right of Way Consultation Addendum for R-2707C. It addresses water resources and federally protected species potentially impacted by the project and serves to update the FEIS and ROD.

WATER RESOURCES

Water resource classifications for R-2707C have not changed since the FEIS and ROD were completed. The following water resources are located within the project area: the First Broad River and its UTs and Hickory Creek and its UTs. The project is located in the Broad River Basin, Hydrological Cataloguing Unit 03050105. Neither High Quality Waters (HQW), Water Supplies (WS-I or WS-II), nor Outstanding Resource Waters (ORW) occur within 1.0 mile of the project area. No surface waters in the project are designated as a North Carolina Natural or Scenic River, or as a national Wild and Scenic River. The First Broad River and Hickory Creek are not listed on DWQs 2012 303(d) list

of impaired waters in North Carolina nor are any listed within one mile of the project. There are 14 wetlands on the project site.

PROTECTED SPECIES

Plants and animals with federal classifications of Endangered (E), Threatened (T), Proposed Endangered (PE), Proposed Threatened (PT), are protected under provisions of Section 7 and Section 9 of the Endangered Species Act of 1973, as amended. As of August 7, 2014, the United States Fish and Wildlife Service (USFWS) list one federally protected species for Cleveland County (Table 1). In 1998, Dwarf-flowered heartleaf was positively identified on the on the project site. A Biological Assessment (BA) from NCDOT was issued in January 2004 with a subsequent Biological Opinion issued by the USFWS in May 2004. Due to the project being delayed for a few years; the USFWS requested that NCDOT prepare an updated BA. A revised BA was submitted August 3, 2012.

The bald eagle has been delisted from the Endangered Species Act as of August 8, 2007. It is still protected under the Bald and Golden Eagle Protection Act. Habitat for the bald eagle (*Haliaeetus leucocephalus*) primarily consists of mature forest in proximity to large bodies of open water for foraging. Large, dominant trees are utilized for nesting sites, typically within 1.0 mile of open water. Suitable habitat for bald eagle does exist in the project study area along King’s Mountain Reservoir. A survey for nest trees was conducted on February 10, 2010 within the study area and to a distance of 660 feet on all sides with no nests or eagles being observed. Another eagle survey will be performed in the fall of 2014.

A US Fish and Wildlife Service proposal for listing the Northern Long-eared Bat (*Myotis septentrionalis*) as an Endangered species was published in the Federal Register in October 2013. The listing will become effective on or before April, 2015. Furthermore, this species is included in USFWS’s current list of protected species for Cleveland County. NCDOT is working closely with the USFWS to understand how this proposed listing may impact NCDOT projects. NCDOT will continue to coordinate appropriately with USFWS to determine if this project will incur potential effects to the Northern long-eared bat, and how to address these potential effects, if necessary.

Table 1. Federally protected species of Cleveland County.

Scientific Name	Common Name	Status	Habitat	Biological Conclusion
<i>Hexastylis naniflora</i>	Dwarf-flowered heartleaf	T	Yes	Not Likely to Jeopardize the Continued Existence of <i>Hexastylis naniflora</i> .

GREENSHEET COMMITMENTS

The above paragraph about the Northern Long-eared Bat has been added to the Greensheet.




STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PATRICK L. MCCRORY
GOVERNOR

September 15, 2014

ANTHONY J. TATA
SECRETARY

MEMORANDUM TO: Marshall Edwards
Project Development Engineer



FROM: Gregory A. Smith, LG, PE
Traffic Noise & Air Quality Supervisor

SUBJECT: **Design Noise Report Review for 2011 NCDOT Traffic
Noise Abatement Policy Compliance**
US 74 – Shelby Bypass
Cleveland County, TIP # R-2707

The Traffic Noise & Air Quality Group reviewed the subject document dated October 14, 2010 for compliance with the 2011 NCDOT Traffic Noise Abatement Policy.

Although the reasonableness criteria have changed since the subject report was conducted, the findings and conclusions of the report are still valid and remain unchanged.

- Based on the current policy, noise abatement measures found to be feasible and reasonable for NSA's G, H and K were confirmed to remain so.
- Based on the current policy, noise abatement measures found to be not reasonable for NSA's A and L were confirmed to still be not reasonable.

Thank you for the opportunity to review this report. Please contact me at (919) 707-6087 or gasmith@ncdot.gov if you need additional information.