



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

PAT L. MCCRORY
GOVERNOR

ANTHONY J. TATA
SECRETARY

August 6, 2013

U.S. Army Corps of Engineers
Regulatory Field Office
151 Patton Avenue, Room 208
Asheville, NC 28801-5006

ATTN: Ms. Lori Beckwith
NCDOT Coordinator

Subject: **Modification Request for Individual Section 404 Permit and to Individual Section 401 Certification for A-0010 C/D**

For Interstate Highway 26 (I-26) from north of NC Highway 213 to the Tennessee State Line
Madison County
NCDOT Division 13
State Project Numbers 8.T842401
T.I.P. Project Number A-0010 C/D
Debit \$570.00 from WBS Element 36654.9.1

References:

- Individual 401 Water Quality Certification No. 3706 issued October 11, 2007.
- Individual Section 404 Permit issued August 28, 1996. COE Action ID 199505135
- COE Modifications issued December 19, 1996 and January 13, 1998.
- COE Letter dated August 8, 2005 from S. Kenneth Jolly to Gregory J. Thorpe.
- NCDOT Letter dated July 25, 2005 from Gregory J. Thorpe to Bill Gilmore.
- EEP acceptance letter dated July 17, 2012.

Dear Ms. Beckwith:

This letter addresses the mitigation requirements specified in the A-0010 project permits that remain unfulfilled, as described in the referenced August 8, 2005 letter from the Corps of Engineers to the North Carolina Department of Transportation (NCDOT). At the time of permit issuance, the NCDOT entered into an agreement with the North Carolina Wildlife Resources Commission (NCWRC) for the NCWRC to provide stream mitigation for the project.

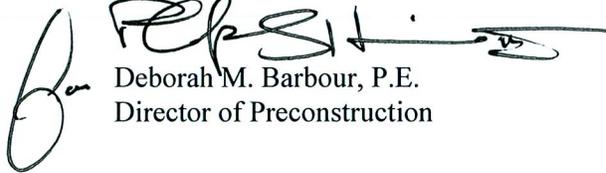
In accordance with the NCDOT/NCWRC agreement for the A-0010 mitigation requirements, the NCWRC identified and developed several mitigation sites. In July 25, 2005, the NCDOT transferred management of all mitigation sites developed by the NCWRC associated with this and other TIP projects for which NCWRC had agreed to provide stream mitigation. The N.C. Ecosystem Enhancement Program (EEP) agreed to manage and complete any remaining work required to close out the existing NCWRC mitigation sites and to implement any additional mitigation credits needed to satisfy the permit conditions associated with the TIP projects. EEP also agreed that mitigation projects developed under each agreement would be utilized toward meeting the mitigation needs of each specific TIP project. Currently, the EEP is scheduled to provide an additional 11,357 stream mitigation credits for project A-0010.

The NCDOT requests that all permits for this project be modified to reflect that the EEP will provide the referenced mitigation credits. Please see the attached EEP Mitigation Acceptance Letter, which provides further detail on the current status of mitigation credits for A-0010.

A copy of this modification request and its distribution list will be posted on the NCDOT website at <http://www.ncdot.org/doh/preconstruct/pe/neu/permit.html>

Thank you for your assistance with this project. If you have any questions or need additional information, please contact Ms. Erin Cheely (919) 707-6108.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Barbour', is written over a horizontal line. The signature is stylized and cursive.

Deborah M. Barbour, P.E.
Director of Preconstruction

CC: NCDOT Permit Application Standard Distribution List w/attachment



July 17, 2012

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

Dear Dr. Thorpe:

Subject: TIP A-0010 C/D, US 19/23 Widening, Madison County, French Broad River Basin – Cataloging Unit 06010105; USACE Action ID 1995-05135

This purpose of this letter is to notify you that the Ecosystem Enhancement Program (EEP) will provide the stream mitigation required to offset the impacts associated with the above referenced TIP project. According to information provided by the NCDOT, the project required 26,345 stream mitigation credits. The NCDOT entered into an agreement with the North Carolina Wildlife Resources Commission (NCWRC) for the stream mitigation needed for this project.

In accordance with the NCDOT/NCWRC agreement for A-0010C/D mitigation requirements, the NCWRC identified and developed several mitigation sites. In July 2005, the NCDOT transferred management of all mitigation sites developed by the NCWRC associated with this and other TIP projects for which NCWRC had agreed to provide stream mitigation. EEP agreed to manage and complete any remaining work required to close out the existing NCWRC mitigation sites and to implement any additional mitigation credits needed to satisfy the permit conditions associated with the TIP projects. EEP also agreed mitigation projects developed under each agreement would be utilized toward meeting the mitigation needs of each specific TIP project.

Most of the stream mitigation sites NCWRC had identified for TIP A-0010C/D were in design or construction at the time of transfer. EEP contracted with the NCWRC to conduct the monitoring activities on the six mitigation projects of which three are now complete and going through the close out process. Monitoring activities for the last project should be completed by the end of 2011. Below is a table of the mitigation projects and associated stream mitigation credits developed by NCWRC specifically for TIP A-0010C/D:

Site Name	County	Phase	Feet	Ratio	Credits
Little Ivy Creek (Barnhill)	Madison	Long Term Management	1,200	1:1	1,200
South Fork Big Pine Creek (Charles/McGinnis)	Madison	Long Term Management	1,100	1:1	1,100
Paint Fork Creek (Fosson)	Madison	Monitoring Close Out	1,700	1:1	1,700
Spring Branch (Plemmons/Kirkpatrick)	Buncombe	Monitoring Close Out	600	1:1	600
Middle Fork Creek (Phillips/Willis)	Madison	Monitoring Close Out	5,213	1:1	5,213
Paint Fork Creek (Brigmon)	Madison	Monitoring Year 5	5,175	1:1	5,175
Total Amount of Mitigation Produced			14,988		14,988

NOTE: Information above was as of July 16, 2012.

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Mr. Greg Thorpe
July 17, 2012
Page Two – TIP A-0010 C/D

EEP previously committed to providing the remaining amount of stream mitigation credits needed to offset the stream impacts associated with this TIP project in October 2005 and have worked on implementing sufficient stream mitigation credits in the cataloging unit to meet this. Currently, the remaining need is 11,357 stream mitigation credits but that amount could change based on any change on the six NCWRC implemented mitigation projects. The final amount of additional mitigation stream credits needed outside of the NCWRC identified mitigation projects will not be precisely known until all six of those mitigation projects have been closed out by the regulatory agencies. If the stream mitigation credits from the above mitigation projects change, then EEP will modify the remaining amount of stream mitigation credits needed for this TIP project.

If you have any questions or need additional information, please contact Mr. Jim Stanfill at 919-218-6872 or Ms. Beth Harmon at (919) 715-1929.

Sincerely,



Suzanne Klimek
EEP Acting Director

cc: Mr. Scott McLendon, USACE – Wilmington Regulatory Field Office
Mr. Todd Tugwell, USACE – Falls Lake
Ms. Lori Beckwith, USACE – Asheville Regulatory Field Office
Mr. David Wainwright, Division of Water Quality, Wetlands/401 Unit
Ms. Linda Fitzpatrick, NCDOT – PDEA
File: A-0010 C/D

Restoring... Enhancing... Protecting Our State





RECEIVED

JUL 27 2005

STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION **NC ECOSYSTEM
ENHANCEMENT PROGRAM**

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

July 25, 2005

Mr. Bill Gilmore, P.E.
Ecosystem Enhancement Program Director
Department of Environment and Natural Resources

Re: Transfer of NCDOT/Wildlife Resource Commission Projects
to the Ecosystem Enhancement Program

Dear Mr. Gilmore,

Per the meeting between the Department and the Ecosystem Enhancement Program on May 18, 2005, and subsequent attached email from Suzanne Klimek on July 7, 2005, the Department is requesting transferal of all existing off-site NCDOT/WRC projects to the EEP. Specifically the Department requests to transfer the following NCDOT/WRC mitigation sites with explanation of status:

Division 10

- Greene Mitigation Site (Mecklenburg Co.): Site includes 783 linear feet (lf) of stream restoration for mitigation for impacts to TIP R-2420B. The site has been constructed and is in the first year of monitoring. Please see the attached as-built report provided by the WRC.
- Earl Haigler Mitigation Site (Union Co.): Site includes 250 lf of stream restoration for mitigation for impacts to TIP R-2123. This site is currently in the design phase; please see the attached restoration plan provided by the WRC.
- Haigler/Price Mitigation Site (Union Co.): Site includes 1,696 lf of stream restoration for mitigation for impacts to TIP R-2123. This site is currently in the design phase; please see the attached restoration plan provided by the WRC.
- Haigler/Rowell Mitigation Site (Union Co.): Site includes 1,174 lf of stream restoration for mitigation for impacts to TIP R-2123. This site is currently in the design phase; please see the attached restoration plan provided by the WRC.
- Sasser/Carriker Mitigation Site (Union Co.): Site includes 701 lf of stream restoration for mitigation for impacts to TIP R-2123. This site is currently in the design phase; please see the attached restoration plan provided by the WRC.
- Williams/Matlock Mitigation Site (Union Co.): Site includes 1,064 lf of stream restoration for mitigation for impacts to TIP R-2123. This site is currently in the design phase; please see the attached restoration plan provided by the WRC.

Division 11

- Bare Mitigation Site (Ashe Co.): Site includes 2,183 lf of stream restoration for mitigation for impacts to TIP R-0529. The site has been constructed and is in the third year of monitoring. Please see the attached restoration plan and as-built report provided by the WRC.
- Carp Mitigation Site (Watauga Co.): Site includes 592 lf of stream restoration for mitigation for impacts to TIP R-0529. The site has been constructed and is in the third year of monitoring. Please see the attached as-built report provided by the WRC.
- Miller Mitigation Site (Watauga Co.): Site includes 652 lf of stream restoration for mitigation for impacts to TIP R-0529. The site has been constructed and is in the second year of monitoring. Please see the attached restoration plan and as-built report provided by the WRC.
- Racey Mitigation Site (Watauga Co.): Site includes 1,150 lf of stream restoration for mitigation for impacts to TIP R-0529. The site has been constructed and is in the third year of monitoring. Please see the attached as-built report provided by the WRC.
- Wild Mitigation Site (Ashe Co.): Site includes 1,819 lf of stream restoration for mitigation for impacts to TIP R-0529. The site has been constructed and is in the second year of monitoring. Please see the attached as-built report provided by the WRC.

Division 12

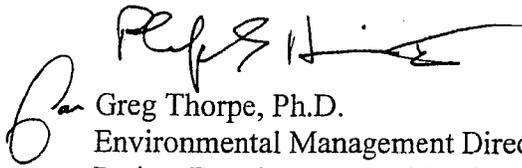
- AH & W (Big Warrior Creek) Mitigation Site (Wilkes Co.): Site includes 16,550 lf of stream restoration for mitigation for impacts to TIP R-2239B. The site has been constructed and is in the second year of monitoring. Please see the attached restoration plan and as-built report provided by the WRC.

Division 13

- Barnhill Mitigation Site (Madison Co.): Site includes 1,200 lf of stream restoration for mitigation for impacts to TIP A-0010WM. The site has been constructed and is in the third year of monitoring. Please see the attached as-built report provided by the WRC.
- Brigmon Mitigation Site (Madison Co.): Site includes 5,175 lf of stream restoration for mitigation for impacts to TIP A-0010WM. The site has been constructed and is in the third year of monitoring. Please see the attached as-built report provided by the WRC.
- Charles/McGinnis Mitigation Site (Madison Co.): Site includes 1,100 lf of stream restoration for mitigation for impacts to TIP A-0010WM. The site has been constructed and is in the third year of monitoring. Please see the attached as-built report provided by the WRC.
- Fosson Mitigation Site (Madison Co.): Site includes 1,700 lf of stream restoration for mitigation for impacts to TIP A-0010WM. The site has been constructed and is in the third year of monitoring. Please see the attached as-built report provided by the WRC.
- Phillips/Willis Mitigation Site (Madison Co.): Site includes 5,504 lf of stream restoration for mitigation for impacts to TIP A-0010WM. The site has been constructed and is in the first year of monitoring. Please see the attached as-built report provided by the WRC.

The 2004 monitoring reports for these sites were submitted to the EEP on CD's and by letter on June 29, 2005. The reports can also be accessed on-line at the NCDOT-Natural Environment Unit's website. Any additional information that is required will need to be provided by the WRC. Please advise if you have any questions concerning this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Greg Thorpe". The signature is written in a cursive style with a large initial "G" and a long horizontal stroke at the end.

Greg Thorpe, Ph.D.
Environmental Management Director
Project Development and Environmental Analysis Branch

Cc: Philip S. Harris III, P.E., CPM, Natural Environment Unit
Randy Griffin, Natural Environment Unit Engineering Group
Linda Fitzpatrick, Natural Environment Unit EEP Coordinator
David Harris, P.E., Roadside Environmental Unit
Shannon Deaton, Wildlife Resource Commission



DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
PO BOX 1890
WILMINGTON NC 28402-1890



August 8, 2005

Regulatory Branch

Action ID 199505135, TIP No. A-0010 C/D

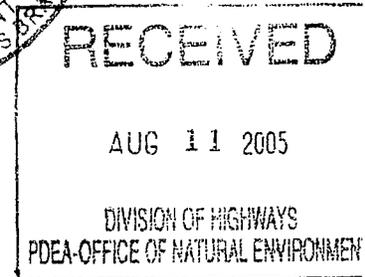
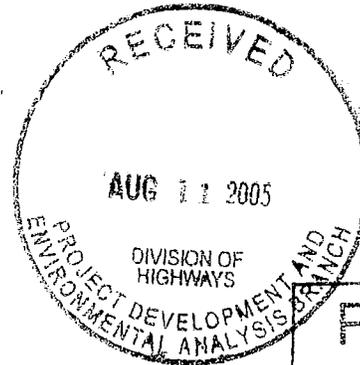
Gregory J. Thorpe, PhD., Manager
North Carolina Department of Transportation
Project Development and Environmental Analysis Branch
1548 Mail Service Center
Raleigh, North Carolina 27699-1548

Dear Dr. Thorpe:

Reference the Department of the Army (DA) permit issued to the North Carolina Department of Transportation (NCDOT) on August 28, 1996, and subsequently modified on December 19, 1996, and January 13, 1998, that authorized the construction of a 10.2-mile long segment of Interstate Highway 26 (I-26) from north of NC Highway 213 to the Tennessee State Line at Sam's Gap near Mars Hill, Madison County, North Carolina (State Project No. 8.T842401). The purpose of this letter is to review NCDOT's efforts to provide stream mitigation required under this DA permit.

Special Condition No. 9 of the referenced permit, together with subsequent modifications, required that the NCDOT provide 26,345 linear feet of off-site, trout stream enhancement as mitigation for impacts resulting from construction of A-0010 C/D. The permit specified that the NC Wildlife Resources Commission (NCWRC) would provide this mitigation by fully implementing a "Reimbursement Agreement" with the NCDOT. To date, the NCWRC has constructed five projects with a total of 14,680 linear feet of stream enhancement in partial fulfillment of this mitigation requirement, the last project being completed in 2003. A total of 11,665 linear feet of stream mitigation is still needed. We are not aware of any additional projects in the planning stages that would substantively reduce this deficit. As you know, construction on Sections C and D of I-26 has been completed and the road has been open to traffic for nearly two years. While the referenced permit does not include an absolute date by which all mitigation must be completed, we have concluded that NCDOT has had sufficient time within the past nine years to comply with the mitigation condition. Consequently, the NCDOT is in violation of the referenced permit and should proceed expeditiously to secure an additional 11,665 linear feet of trout stream enhancement.

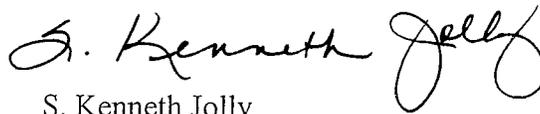
Please provide a detailed written plan indicating the steps that NCDOT intends to take to comply with the referenced permit condition and make up the 11,665 linear-foot deficit. This plan should include an appropriate schedule and should be submitted within 30 days of the date



of this letter. Following review of your response, we will determine if further administrative action is necessary. Such action may include suspending the processing of applications for work on other sections of I-26 or projects with a direct system linkage to I-26 or the formal suspension/revocation of the existing DA permit for this highway.

If you have any questions, please contact Mr. Scott McLendon or Mr. Steven Lund, Asheville Regulatory Field Office, at telephone 828-271-7980.

Sincerely,

A handwritten signature in black ink that reads "S. Kenneth Jolly". The signature is written in a cursive style with a large, looping "J" at the end.

S. Kenneth Jolly
Chief, Regulatory Division

Copy Furnished:

Mr. Phillip S. Harris, III, Manager
North Carolina Department of Transportation
Office of Natural Environment, PDEA
1598 Mail Service Center
Raleigh, North Carolina 27699-1548