



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY PERDUE
GOVERNOR

EUGENE CONTI
SECRETARY

August 12, 2009

MEMORANDUM TO: Mr. C. E. Lassiter, Jr., PE
Division Two Engineer

FROM: Philip S. Harris, III, P.E., Unit Head
Natural Environment Unit
Project Development and Environmental Analysis Branch

SUBJECT: Craven County, US 17 New Bern Bypass from US 17 just south of the
Jones/Craven County Line to US 70; T.I.P. Number R-2301; WBS Element
34414.1.1; State Project 6.179001T

A handwritten signature in black ink, appearing to read "E. S. Fusk".

Attached are the modified N.C. Division of Water Quality Section 401 Individual Water Quality Certification and Riparian Buffer Authorization for the above referenced project. All environmental permits have been received for the construction of this project.

A copy of this permit package will be posted on the NCDOT website at:
<http://www.ncdot.gov/doh/preconstruct/pe/neu/permit.html>

PSH/gyb

Attachment

Mr. Randy Garris, P.E. State Contract Officer
Mr. Jay B. Johnson, Division Environmental Officer
Ms. Beth Harmon, EEP

Cc: W/o attachment (see website for attachments)
Mr. Majed Alghandour, P. E., Programming and TIP
Mr. Jay Bennett, P.E., Roadway Design
Dr. David Chang, P.E., Hydraulics
Mr. Art McMillan, P.E., Highway Design
Mr. Tom Koch, P.E., Structure Design
Mr. Mark Staley, Roadside Environmental
Mr. John F. Sullivan, FHWA
Mr. Ron Hancock, P.E., State Roadway Construction Engineer
Mr. Mike Robinson, P.E., State Bridge Construction Engineer
Mr. Rob Hanson, P.E., PDEA Eastern Region Unit Head

PROJECT COMMITMENTS

US 17 New Bern Bypass
From US 17 just south of the Jones/Craven County Line to US 70
Craven County
WBS Element 34414.1.1
State Project No. 6.179001T
TIP PROJECT R-2301

COMMITMENTS DEVELOPED THROUGH PROJECT DEVELOPMENT AND DESIGN

All commitments developed during the project development and design phase have been incorporated into the design and were standard commitments. Current status, changes, or additions to the project commitments as shown in the Draft Environmental Impact Statement for the project are printed in *italic* font.

Project Development & Environmental Analysis Branch

- The USFWS will be consulted prior to letting to ensure no additional species were added to the protected species list subsequent to approval of the Record of Decision.

The January 31, 2008 US Fish and Wildlife list of federally-protected species for Craven and Jones Counties was reviewed during the preparation of this Construction Consultation for updates since the approval of the Record of Decision (June 19, 2001) and the Right of Way Consultation (June 6, 2006). The Bald eagle was removed from the Endangered Species List on August 8, 2007. Other than delisting of the Bald eagle, no other changes in the list or impacts to species on the list have occurred. This portion of the project is not expected to have any effect on any of the species currently included on the list

- Manatee Construction Precautions will be implemented to ensure the species will not be impacted during construction.

No habitat for the West Indian Manatee exists within this portion of the proposed New Bern Bypass project.

- Wetland impacts to riverine systems associated with the Neuse River and Swift and Bachelor Creeks will be minimized by bridging the adjacent riverine wetland systems.

Wetland impacts along this section of the project have been avoided and minimized to the extent possible through the Section 404/NEPA Interagency Merger Process. In accordance with a March 6, 2007 Bridging Decisions field Meeting and an April 11, 2007 Permit Drawing Review Meeting (Concurrence Point 4C), the Deep Gully crossing located at the Jones/Craven County Line will be bridged to minimize impacts to the associated wetland system.

- The unavoidable impacts that occur due to clearing and pile driving will be mitigated by the removal of NC 43 and the restoration of wetland function.

This special project commitment is relative to Section A of the project only in the sense that it's part of the total project mitigation. No work on NC 43's anticipated as part of R-2301 A.

PROJECT COMMITMENTS

- In accordance with the letter from the Secretary, North Carolina Department of Transportation (NCDOT), to the Chief of the Regulatory Branch, U. S. Army Corps of Engineers, dated June 5, 1995, the NCDOT will complete construction of the wetland mitigation for the proposed action, and conduct monitoring until reasonable success is demonstrated, prior to beginning construction on any segment of the US 17 New Bern Bypass. This includes the mitigation for all unavoidable impacts to wetlands, except the impacts to riverine wetlands associated with the Neuse River, Swift Creek and Bachelor Creek, which will be mitigated by the removal of NC 43. The riverine wetland mitigation will be performed after the Bypass is complete and open to traffic.

Subsequent to this condition, several on-site mitigation areas have been deemed successful by the U.S. Army Corps of Engineers. Both the Sawmill mitigation site and the Croatan mitigation site have been constructed and are currently being monitored for success. Preliminary results of monitoring indicate that these sites will be successful. Coordination of these sites with the USA CE, USEPA, and other involved regulatory and resource agencies will continue between now and the beginning of construction of R-2301 A.

- Prior to right of way acquisition in the vicinity of the Carman House, NCDOT Will consult with the North Carolina SHPO in order to determine if mitigation measures for the Carman House are necessary.

The Carman House is located in the fork of NC 43 and SR 1401 (Spring Garden Road) in Section B of the project. This consultation covers only Section A of the project.

- Prior to implementing any additional archaeological work at sites 31Cv254, 31Cv255, and 31Cv256, the NCDOT will coordinate with the FHWA and SHPO on a Memorandum of Agreement to define appropriate data recovery measures. Data recovery efforts at the sites will be completed prior to beginning construction activities in the area.

This Construction Consultation only covers Section A of the project. None of the three sites listed in the commitment occur in Section A.

- NCDOT will continue coordination and discussions with the North Carolina Wildlife Resources Commission and other federal and state agencies during the final design of the project regarding issues related to large mammal passage across the project.

The entire project, including Segment A, was coordinated with the NCWRC and other federal and state agencies through the Section 404/NEPA Interagency Merger Process. No large mammal passages have been recommended in Segment A of the project by the merger team members.

Roadway Design Unit

- During final design, design improvements to upgrade the level of service (LOS) at the intersection of NC 55 and the US 17 Bypass northbound ramps will be considered.

NC 55 is located north of US 70 within Segment B of the project. This consultation includes improvements to Segment A.

PROJECT COMMITMENTS

- Noise Abatement will be evaluated further and a design noise report will be prepared during final design.

The latest noise report supplement that was completed for the project was in February, 1995 in preparation of the NEPA documents. Traffic impacts and barrier analysis were reevaluated during this Construction Consultation in accordance with current guidelines. Again, mitigation for noise impacts was determined not to be reasonable or feasible.

- Bridge construction technique studies will be performed during design and will be coordinated with regulatory agencies.

The Deep Gully crossing was coordinated with the Merger Process Team.

Division 2

- Coordination with the U. S. Fish and Wildlife Service and North Carolina Wildlife Resources Commission will be undertaken during construction to ensure minimal impacts to fisheries resources.
- Deck drains (weep holes) will not be installed in bridges over Deep Gully, Bachelor Creek, the Neuse River, and Swift Creek.

Only the Deep Gully crossing is located in Segment A of this project. Bachelor Creek, Neuse River, and Swift Creek are located in Segment B and are not included in this Construction Consultation for Segment A.

- No grubbing within the riverine wetland systems adjacent to the Neuse River and its tributaries will be conducted.

This commitment will be honored for any tributaries to the Neuse River that may be present in Segment A of the project.

- Efforts will be made to salvage all pulpwood and saw timber once construction has commenced.

Highway Design Branch/ Division 2 / Right of Way Branch

- Coordination with appropriate state and federal regulatory agencies will be implemented to ensure project consistency with applicable floodplain policies and regulations.
- Any hazardous waste sites or unrecorded underground storage tanks discovered during the final design and construction phases of the project will be assessed and remediated in compliance with the U.S. Environmental Protection Agency, the North Carolina Department of Environment and Natural Resources, and local policies regarding cleanup procedures. This will occur prior to continuation of construction.

PROJECT COMMITMENTS

- Access to Weyerhaeuser timberlands south of US 70 will be provided via service roads. Disruption of the drainage system flow developed to make the surrounding commercial timber lands productive will be avoided, or minimized if avoidance is not possible.

Access to Weyerhaeuser timberlands is not available under the current parameters of the design. The Right of Way Branch will negotiate the loss of access with Weyerhaeuser.

- In order to protect anadromous fisheries habitat during seasonal migration, there will be a moratorium between March 1 through August 31 on in-water construction such as pile driving in Bachelor Creek, the Neuse River, and Swift Creek.

Each of these water resources is located within section B of the project.

- High Quality Water Best Management Practices will be implemented at streams, creeks, and rivers crossed by the proposed action.
- The New Bern Bypass will be designed and constructed in accordance with Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Riparian Buffers (15A NCAC 2B.0233).
- No borrow or waste areas or pits will be permitted in areas under US Army Corps of Engineers jurisdiction.

COMMITMENTS DEVELOPED THROUGH PERMITTING

Project Development & Environmental Analysis Branch

404/401 Permits

- The 404/401 authorizations are only for R-2301 Section A. Construction of Section B will only be allowed once all appropriate and practicable avoidance and minimization measures have been employed and final designs have been completed and plans have been approved by the District Commander.

CAMA Consistency Review

- Construction of the entire project which encompasses both R-2301A and R-2301B is expected to impact a total of 30.60 acres of permanent wetland impacts, 3.05 acres of permanent surface water impacts, and 334 linear feet of permanent stream impacts. However, the R-2301B section of the project is currently unfunded and jurisdictional resource impacts of the project are based on functional roadway construction limits. Therefore, no mitigation for R-2301B is proposed at this time. The Applicant shall submit a mitigation plan to address impacts by the construction of the R-2301B section when all avoidance and minimization measures have been taken and final design is complete, prior to the submission of the CAMA Major Permit application. The mitigation plan shall be approved by DCM, in consultation with the WRC, DWQ, and the US

Army Corps of Engineers (USACE) before a CAMA Major Permit is issued to authorize the construction of R-2301B.

EEP MITIGATION

- Compensatory mitigation for the unavoidable impacts to 11.82 acres of riparian wetlands, 6.68 acres of non-riparian wetlands, and 334 linear feet of stream associated with the proposed project shall be provided by the Ecosystem Enhancement Program (EEP), as outlined in the letter dated August 29, 2008 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 23.64 acres of restoration equivalent riparian wetlands, 13.36 acres of restoration equivalent non-riparian wetlands, and 668 linear feet of restoration equivalent warm water stream channel in the Neuse River basin (Hydrologic Cataloging Units 03020202 and 03020204) in accordance with Section X of the MOA. 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.

JULY 2009 PERMIT MODIFICATION

- Compensatory mitigation for impacts to 21,339 square feet of protected riparian buffers in Zone 1 and 15,065 square feet of protected riparian buffers in Zone 2 shall be required.

Mitigation for the unavoidable impacts to jurisdictional resources will be provided by the EEP. EEP indicated in a revised letter dated July 23, 2009 that they will assume responsibility for satisfying the compensatory mitigation requirements for the above-referenced project, in accordance with the Tri-Party MOA signed on July 22, 2003 and the Dual-Party MOA signed on April 12, 2004.

- Per the August 6, 2009 email from William Wescott with the USACE (see attached) "If stumps are extracted and hauled to an upland disposal site and no other ground disturbing activities are needed then the extraction of stumps can occur without modifying the permit."
- There are no additional special conditions as a result of this permit modification.



North Carolina Department of Environment and Natural Resources
Division of Water Quality

Beverly Eaves Perdue
Governor

Coleen H. Sullins
Director

Dee Freeman
RECEIVED

Division of Highways

July 29, 2009

JUL 31 2009

Preconstruction
Project Development and
Environmental Analysis Branch

Stanton
RECEIVED
AUG 3 2009
DIVISION OF HIGHWAYS
PDEA-OFFICE OF NATURAL ENVIRONMENT

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

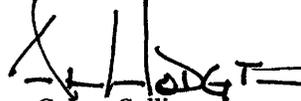
Subject: Modification of 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act and Neuse River Basin Buffer Authorization with ADDITIONAL CONDITIONS for the proposed New Bern Bypass (on new location) in Jones and Craven Counties, State Project No. 6179001T, TIP R-2301A and R-2301B.
DWQ Project No. 20080984 v.2
DWQ Certification No. WQC003757

Dear Dr. Thorpe:

Attached hereto is a modification of Certification No. 003757 issued to The North Carolina Department of Transportation dated September 22, 2008. This modification is applicable only to the additional activities in R-2301 section A. All the authorized activities and conditions associated with the original Water Quality Certification dated September 22, 2008 and subsequent modifications still apply except where superceded by this certification.

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

Sincerely,


Coleen Sullins
For Director

Attachments

- cc: William Wescott, US Army Corps of Engineers, Washington Field Office
- Jay Johnson, Environmental Officer, NCDOT Division 2
- Steve Sollod, Division of Coastal Management
- Sonia Gregory, DWQ 401/Wetlands unit
- File Copy

**Modification of 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act and
Neuse River Basin Buffer Authorization with 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 .0500 and (15A NCAC 2B .0233) This certification authorizes the NCDOT to impact 21.37 acres of jurisdictional wetlands, and 76,025 square feet of protected riparian buffers in Jones and Craven Counties. The project shall be constructed pursuant to the application dated received July 16, 2009. The authorized impacts are as described below:

Wetland Impacts in the Neuse River Basin

R-2301A						
Site	Permanent Fill (ac)	Temporary Fill (ac)	Excavation (ac)	Mechanized Clearing (ac)	Hand Clearing (ac)	Total Wetland Impact (ac)
1A	0.071	0	0	0	0.007	0.078
1B	0.128	0	0	0.009*	0.514	0.651
1C	0.009	0	0	0	0.013	0.022
2	0.037	0	0	0	0.008	0.045
3	0.221	0	0	0	0.031	0.252
4	0.404	0	0	0	0.053	0.457
5	1.062	0	0	0	0.118	1.180
6	0.422	0	0	0	0.057	0.479
7	0.043	0	0	0	0.003	0.046
8	0.092	0	0	0	0.049	0.141
9	0.470	0	0	0	0.069	0.539
10	1.165	0	0.058	0	0.119	1.342
10A	0	0	0	0	0.001	0.001
11	9.172	0	0	0	1.102	10.274
12	0.715	0	0	0	0.097	0.812
16	0.116	0	0	0	0.033	0.149
18	1.939	0	0	0	0.302	2.241
19	0.087	0	0	0	0	0.087
20	1.043	0	0	0	0.141	1.184
21	0.614	0	0.562	0	0.135	1.311
22	0.025	0	0	0	0.015	0.040
23	0	0	0.039	0	0	0.039
TOTAL:	17.84	0.00	0.66	0.009	2.87	21.37

Total Wetland Impact for Section A: 21.37 acres

* 0.009 ac mechanized clearing at site 1B only additional wetland impacts authorized with this modification

Neuse River Basin Riparian Buffer Impacts

R-2301A								
Site	Zone 1 Impact (sq ft)	<i>minus</i> Wetlands in Zone 1 (sq ft)	Zone 1 Buffers (sq ft)	Zone 1 Buffer Mitigation Required (3:1 ratio)	Zone 2 Impact (sq ft)	<i>minus</i> Wetlands in Zone 2 (sq ft)	Zone 2 Buffers (sq ft)	Zone 2 Buffer Mitigation Required (1.5:1 ratio)
1	23,138	1,739	21,339	64,197	15,780	762	15,018	22,527
2	22,486	0	22,486	0*	14,621	0	14,621	71**
TOTAL:	45,624	1,739	43,825	64,197	30,401	762	29,592	22,598

*mitigation not required for the bridge structure

**mitigation for 47 ft² of road approach fill at the bridge site.

Total Buffer Impact for Project: 76,025 square feet.

The application provides adequate assurance that the discharge of fill material into the waters of the Neuse 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 modified application dated received June 16, 2009. All the authorized activities and conditions associated with the original Water Quality Certification dated September 22, 2008 still apply except where superceded by this certification. 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 on the same day as the expiration date of the corresponding Corps of Engineers Permit.

Conditions of Certification:

1. This modification is applicable only to the additional proposed activities. All of the authorized activities and conditions associated with the original Water Quality Certification dated September 22, 2008 still apply except where superceded by this certification.
2. Compensatory mitigation for impacts to 21,339 square feet of protected riparian buffers in Zone 1 and 15,065 square feet of protected riparian buffers in Zone 2 shall be required. We understand that you have chosen to perform compensatory mitigation for impacts to protected buffers through use of the North Carolina Ecosystem Enhancement Program (EEP). Mitigation for unavoidable impacts to Neuse Riparian Buffers shall be provided in the Neuse River Basin and done in accordance with 15A NCAC 2B .0233. EEP has indicated in a letter dated July 23, 2009 that they will assume responsibility for satisfying the compensatory mitigation requirements for the above-referenced project, in accordance with the Tri-Party MOA signed on July 22, 2003 and the Dual-Party MOA signed on April 12, 2004.
3. The permittee 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 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.

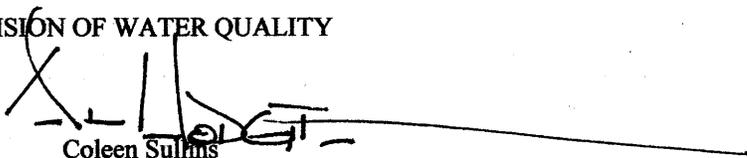
4. A copy of this Water Quality Certification shall be maintained on site at the construction site at all times. In addition, the Water Quality Certification and all subsequent modifications, if any, shall be maintained with the Division Engineer and the on-site project manager.

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 or CAMA 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, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. 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 29th day of July 2009

DIVISION OF WATER QUALITY


Coleen Sulms
Director

FOR

WQC No. 003757

Rivenbark, Chris

From: Stanton, Tyler P
Sent: Friday, August 07, 2009 7:22 AM
To: Rivenbark, Chris
Subject: FW: R-2301A Modification

FYI

-----Original Message-----

From: Wescott, William G SAW [mailto:William.G.Wescott@saw02.usace.army.mil]
Sent: Thursday, August 06, 2009 5:18 PM
To: Stanton, Tyler P
Subject: RE: R-2301A Modification

Tyler,

- 1) The buffer issue is strictly a DWQ mod.
- 2) As per Chad Coggins (NCDOT Division 4 DEO) presentation at the interagency meeting on July 23, 2009 regarding mechanized clearing for temporary work bridge bents and the subsequent discussion among the COE folks, the following decision was made. If stumps are extracted and hauled to an upland disposal site and no other ground disturbing activities are needed then the extraction of stumps can occur without modifying the permit.

Chad's presentation hopefully will result in less permit mods and less mitigation being required.

William

-----Original Message-----

From: Stanton, Tyler P [mailto:tstanton@ncdot.gov]
Sent: Wednesday, August 05, 2009 8:27 AM
To: Wescott, William G SAW
Subject: R-2301A Modification

William,
Can you tell me the status of the Mod for R-2301A?
Thanks,
Tyler

Tyler Stanton
Biologist
NCDOT, Natural Environment Unit

Direct 919.431.6748
Fax 919.431.2002
tstanton@ncdot.gov <mailto:tstanton@ncdot.gov>

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