



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY PERDUE
GOVERNOR

EUGENE CONTI
SECRETARY

February 26, 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: Beaufort County, Improvements to US 17 over the Tar
River; T.I.P. Number R-2510; Federal Aid Project No.
MAF-75-3(26); State Project 8.T150601



Attached are the modifications to the U.S. Army Corps of Engineers Section 404 Individual Permit, N.C. Division of Water Quality Section 401 Individual Water Quality Certification, N.C. Division Coastal Management CAMA Permit 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

Cc: W/attachment
Mr. Randy Garris, P.E. State Contract Officer
Ms. Beth Harmon, EEP
Mr. Jay B. Johnson, Division Environmental Officer

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

Beaufort County
Improvements to US 17
Over the Tar River
Federal Aid Project MAF-75-3 (26)
State Project 8.T150601
TIP No. R-2510

In addition to the standard Nationwide Permit # 6 Conditions, the Individual Permit Conditions, the General Nationwide Permit Conditions, Section 404 Only Conditions, Regional Conditions, State Consistency Conditions, General Certification Conditions, Individual Section 404 Special Conditions and the Section 401 Conditions of Certification, the following Special Commitments have been agreed to by NCDOT:

Commitments Developed During Permitting:

Division 2 Construction

In order to protect Striped Bass, American Shad, and River Herring during spawning periods and through embryonic, larval or juvenile life stages, no in-water work shall be conducted in the channel of the Tar-Pamlico River from February 15 through June 15 of any year, and no in-water work shall be conducted within the connected inundated floodplain from February 15 through May 31 of any year, without prior approval of the NC Division of Coastal Management (DCM), in consultation with the NC Wildlife Resources Commission (WRC) and the NC Division of Marine Fisheries (DMF). *This condition has been modified to allow in-water work to occur until April 30, 2009 with stipulations.. Please see the attached attached modifications to the: Section 404 Individual Permit, Section 401 Water Quality Certification and Tar-Pamlico Buffer Authorization, and the CAMA Major Development Permit for further details.*

The permittee shall implement NCDOT's Stream Crossing Guidelines for Anadromous Fish Passage, except as modified in Condition No.1 of this permit.

The West Indian Manatee, *Trichechus manatus*, which is listed as a federally endangered species, has been reported in North Carolina waters. In order to protect the West Indian manatee all in-water work should be done during the period from November 1 to May 31. If work must be done during the period from June through October the enclosed guidelines prepared by the U.S. Fish and Wildlife Service (USFWS) (rev. 06/2003), entitled "Guidelines for Avoiding Impacts to the West Indian Manatee: Precautionary Measures for Construction Activities in North Carolina Waters" shall be followed.

Compensatory mitigation for impacts to 110,842.3 square feet of protected riparian buffers in Zone 1 and 74,854.0 square feet of protected riparian buffer in Zone 2 shall be required as described below, and replaces condition #10 in the 401 Water Quality Certification dated September 6, 2005:

Riparian Buffer Zone	Area Impacted (sq. ft.)	Mitigation Ratio	Area to Be Mitigated (sq. ft.)
Zone 1	110,842.3	3:1	315,368.4
Zone 2	74,854.0	1.5:1	106,332.2
		Total	421,700.6

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 Tar-Pamlico Riparian Buffers shall be provided in the Tar-Pamlico River Basin (HUC 03020104) and done in accordance with 15A NCAC 2B .0259. EEP has Green Sheet R-2510
February 2009 Modification
Revisions to Page 1 of 7 only

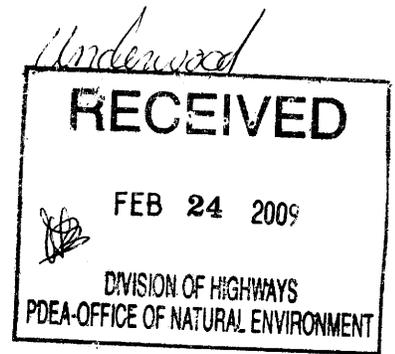


IN REPLY REFER TO

**DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS**

Washington Regulatory Field Office
P.O. Box 1000
Washington, North Carolina 27889-1000

February 19, 2009



Regulatory Division

ORM ID SAW-199301143

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

Dear Dr. Thorpe:

Reference the Department of the Army permit issued to you on January 17, 2006, for Section A and January 17, 2007, for Section B of the U.S. Highway 17 Washington Bypass project (R-2510), starting from 0.5 mile south of Possum Track Road (NCSR 1127) south of Chocowinity, in Beaufort County and ending at U.S. 17 north of SR 1509 (Springs Road). Also reference your January 27, 2009 request for modification of the Section B permit to allow for in-water construction work within the fisheries moratorium period.

Your modification request was coordinated and discussed in detail with the appropriate State and Federal resource agencies and agreement was reached to allow for permit modification provided the following conditions are met. The only changes to the Section B permit are those submitted in your January 27, 2009 and February 19, 2009 modification requests as addressed below. All authorized activities and conditions associated with the original permit and any other corresponding modifications remain in full force and effect except where superseded by this specific modification.

1. The Permittee shall develop and conduct a study to monitor the effects of in-water pile driving work on anadromous fishes. The study shall be designed and implemented by an independent, third party and approved by the U.S. Army Corps of Engineers (Corps) in coordination with the appropriate resource agencies prior to the commencement of any in-water pile driving work.
2. The Permittee shall submit the final study plan to the Corps no later than March 6, 2009 for review and approval. Testing pursuant to the plan must begin before any in-water pile driving work commences. The Permittee shall continue to monitor pursuant to the approved study throughout the period that in-water pile driving is being conducted during the moratorium.

3. Upon approval and implementation of the fisheries study plan, the Permittee may continue in-water pile driving work one twenty-four (24) hour period out of every seven (7) consecutive calendar days through April 30, 2009. The Permittee shall not exceed a cumulative total pile driving time of 4 hours per day without prior approval from the Corps.

4. If the Permittee documents mortality of any of the following fish species with respective numbers, all in-water work shall immediately cease and the Permittee shall immediately contact the Corps for further evaluation.

a. Sturgeon – 1 fish for the entire moratorium period

b. 25 fish per bent installation in any combination of the following species:

- River Herring
- Hickory Shad
- American Shad
- Striped Bass

5. Stump removal at the bent locations may proceed upon receipt of this modification.

The permit is hereby modified to include the work as indicated above. It is understood that all conditions of the original permit remain applicable and that the expiration date is unchanged.

Thank you for your time and cooperation. If you have any questions, please contact Mr. William Wescott of my Washington Regulatory Field Office Staff at telephone (252) 975-1616, extension 31.

Sincerely,



David M. Lekson, P.W.S.
Chief, Washington Regulatory Field Office

Copies Furnished:

Mr. Steve Sollod
Division of Coastal Management
1638 Mail Service Center
Raleigh, North Carolina 27699-16387

Mr. Brian Wrenn
Water Quality Section
Division of Environmental Management
North Carolina Department of Environment
and Natural Resources
1650 Mail Service Center
Raleigh, North Carolina 27699-1650

Mr. Travis Wilson
Eastern Region Highway Project Coordinator
Habitat Conservation Program
1142 I-85 Service Road
Creedmoor, North Carolina 27522

Mr. Pete Benjamin
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
101 Pivers Island
Beaufort, North Carolina 28516

Mr. Louis B. Daniel III
NC Division of Marine Fisheries
North Carolina Department of Environment
and Natural Resources
Post Office Box 769
Morehead City, North Carolina 28557



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

RECEIVED
Division of Highways

FEB 24 2009

Beverly Eaves Perdue
Governor

Coleen H. Sullins
Director

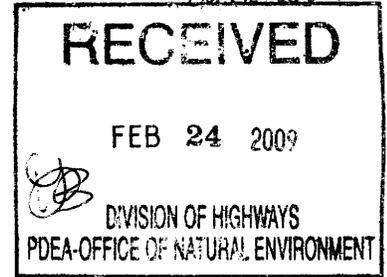
Dee Freeman
Secretary

Project Development and
Environmental Analysis Branch

Underwood

February 20, 2009

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



Subject: Modification to the 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act and Tar-Pamlico River Buffer Authorization with ADDITIONAL CONDITIONS for Proposed improvements to US 17 from south of SR 1149 (Price Rd) to north of SR 1509 (Springs Rd) in Beaufort County, Federal Aid Project No. MAF-75-3 (26), TIP R-2510B. DWQ Project No. 20050785 v.11, v.12

Dear Dr. Thorpe:

Attached hereto is a modification of Certification No. 3527 issued to The North Carolina Department of Transportation dated September 6, 2005. This modification is applicable only to the additional activities in R-2510 section B. All the authorized activities and conditions associated with the original Water Quality Certification dated September 6, 2005 and subsequent modifications still apply except where superceded by this certification.

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

Sincerely,

FOR Coleen H. Sullins
Director

Attachments

- cc: Mr. William Wescott, Corps of Engineers, Washington Field Office
- Mr. Jay Johnson, Division 2 Environmental Officer, PO Box 1587, Greenville, NC 27835
- Mr. Steven Sollod, NCDENR- DCM, 2728-168 Capital Blvd., Parker Lincoln Bldg., Raleigh, NC 27604
- Mr. Stephen Lane, DCM, Morehead City
- Mr. Roger Rochelle, NC DOT, Transportation Program Management, 1595 Mail Service Center Raleigh, NC 27699
- Mr. Travis Wilson, NCWRC, 1142 I-85 Service Rd, Creedmoor, NC 27522
- Mr. Louis Daniel, NCDMF, P.O. Box 679, Morehead City, NC 28557
- Ms. Sonia Gregory, NCDWQ, 401/Wetlands Unit
- File Copy

Modification to the 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act and Tar-Pamlico River 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 .0259 for the Tar-Pamlico Basin. This Certification modifies condition 8 of the original Water Quality Certification issued September 6, 2005, prohibiting in-water work from February 15 through June 15 of any year. This modification authorizes the NCDOT and their contractor Flatiron/United to conduct in-water work in the Tar River in Beaufort County on a limited basis during the moratorium period. No additional wetland or stream impacts are authorized with this modification. The project shall be constructed pursuant to the modification requests dated January 27, 2009 and February 19, 2009. The conditions of this certification are described below.

The applications provide adequate assurance that the discharge of fill material into the waters of the Tar 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 applications dated January 27, 2009 and February 19, 2009. All the authorized activities and conditions associated with the original Water Quality Certification dated September 6, 2005, and all subsequent modifications 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.

Condition(s) of Certification:

1. The only modifications to the design of the project authorized by this certification are those submitted in your applications dated January 27, 2009 and February 19, 2009. All authorized activities and conditions associated with the original Water Quality Certification dated September 6, 2005 and all other corresponding modifications still apply except where superceded by this certification.
2. The permittee shall conduct a study to determine the effects of in-water pile driving on anadromous fishes. The study shall be designed and implemented by an independent third party and approved by the North Carolina Division of Water Quality in coordination with the appropriate resource agencies.
3. The study plan shall be submitted to NCDWQ no later than March 6, 2009. NCDWQ will provide approval within one week of receipt of the study plan. The study plan must be implemented (testing begins) before any in-water pile driving work can begin. However, the removal of stumps and other obstructions at the bent locations can proceed upon receipt of this modification. The study will continue throughout the time that NCDOT/Flatiron is conducting in-water work during the moratorium.
4. Upon implementation of the approved study plan, NCDOT shall be allowed to continue in-water pile driving work 1 day out of every 7 consecutive calendar days through April 30, 2009. Total pile driving time shall not exceed 4 hours per 24 hr period without prior approval from NCDWQ. Should

additional time for in-water work be needed beyond April 30, 2009, NCDOT shall submit a modification request to extend the variance.

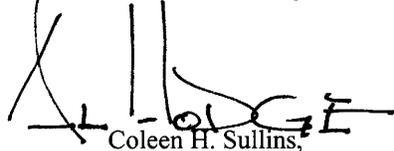
5. If mortality of any of the following fish species with respective numbers is observed, then all in-water work shall cease pending further evaluation by NCDWQ.
 - Sturgeon – 1 fish for the entire in-water work period
 - 25 fish per bent installation in any combination of the following species:
 - i. River herring
 - ii. Hickory shad
 - iii. American shad
 - iv. Striped bass
6. 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 NCDWQ 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, NCDWQ may reevaluate and modify this certification.
7. 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.

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, 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 20th day of February 2009

DIVISION OF WATER QUALITY



Coleen H. Sullins,

Director

FOR



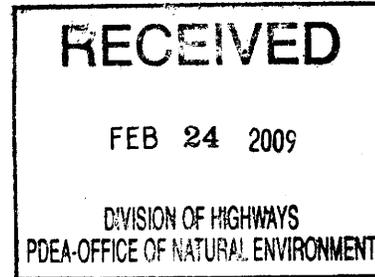
North Carolina Department of Environment and Natural Resources
Division of Coastal Management

Beverly Eaves Perdue
Governor

James H. Gregson
Director

Dee Freeman
Secretary

February 20, 2009



NC Department of Transportation
1598 Mail Service Center
Raleigh NC 27699-1598

Dear Sir or Madam:

The enclosed permit constitutes authorization under the Coastal Area Management Act, and where applicable, the State Dredge and Fill Law, for you to proceed with your project proposal. **Please sign both the original (buff-colored form) and the Xerox stamped "Copy". Return the copy** to this office in the enclosed envelope. Signing the permit and proceeding means you have waived your right of appeal described below. **Please retain the original (buff-colored form)**, as it must be available on site when the project is inspected for compliance.

If you object to the permit or any of the conditions, you may request a hearing pursuant to NCGS 113A-121.1 or 113-229. Your petition for a hearing must be filed in accordance with NCGS Chapter 150B with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27611-6714, (919) 733-2698 within twenty (20) days of this decision on your permit. You should also be aware that if another qualified party submits a valid objection to the issuance of this permit within twenty (20) days, the matter must be resolved prior to work initiation. The Coastal Resources Commission makes the final decision on any appeal.

The project plan is subject to those conditions appearing on the permit form. Otherwise, all work must be carried out in accordance with your application. Modifications, time extensions, and future maintenance require additional approval. Please read your permit carefully prior to starting work and review all project plans, as approved. If you are having the work done by a contractor, it is to your benefit to be sure that he fully understands all permit requirements.

From time to time, Department personnel will visit the project site. However, if questions arise concerning permit conditions, environmental safeguards, or problem areas, you may contact Department personnel at any time for assistance. By working in accordance with the permit, you will be helping to protect our vitally important coastal resources.

Sincerely,

Douglas V. Huggett
Major Permits and Consistency Manager

Enclosure

Permit Class
MODIFICATION/MINOR

Permit Number
29-07

STATE OF NORTH CAROLINA
Department of Environment and Natural Resources
and
Coastal Resources Commission

Permit

for

Major Development in an Area of Environmental Concern
pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229

Issued to N.C. Department of Transportation, 1598 Mail Service Center, Raleigh, NC 27699-1598

Authorizing development in Beaufort County at a new crossing of the Tar River as part of the US 17 bypass of the City of Washington, as requested in the permittee's application dated 1/27/09

including the attached memo from Flatiron/United dated 11/20/08, one 11X17 drawing dated 1/26/09, a pile driving schedule, and memo dated 2/19/09.

This permit, issued on February 20, 2009, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to fines, imprisonment or civil action; or may cause the permit to be null and void.

Modification of In-Water Work Moratorium

- 1) In order to protect anadromous fisheries resources, the in-water work moratorium listed in Condition No. 1 of the original of Permit 29-07 is hereby modified to allow stump removal at the bent locations to take place through April 30th 2009. Additional in-water work may take place between the date of this modification and April 30th 2009 provided that a) the permittee first develop, in coordination with the WRC and DMF, a study methodology and implementation plan that will evaluate the impacts of the authorized activity on anadromous fish utilizing the waters of the Tar River at and adjacent to the project site, and b) all work is carried out in strict compliance with the procedures and guidelines set forth in the permittee's 11/20/08, 1/27/09, and 2/19/09 memos. Prior to any in-water pile driving work between the date of this modification and April 30, 2009, a copy of this study plan shall be submitted to the Division of Coastal Management for approval, in coordination with DMF and WRC. The permittee is encouraged to develop and submit this study plan to DCM at its earliest convenience to allow adequate review time.

(See attached sheet for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance as the case may be.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

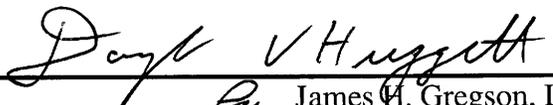
Any maintenance work or project modification not covered hereunder requires further Division approval.

All work must cease when the permit expires on

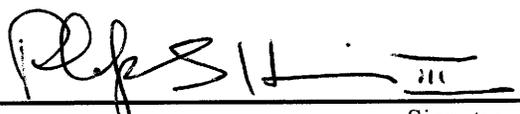
No Expiration Date, pursuant to GS 136-44.7B

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DENR and the Chairman of the Coastal Resources Commission.


James H. Gregson, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.


Signature of Permittee

ADDITIONAL CONDITIONS

- 2) Once a study plan, which shall include specific fish mortality limits, is submitted to and approved by DCM, the in-water pile driving work in the Tar River shall only occur once per week with a total driving time not to exceed 4 hours per week between February 15th and April 30th, unless additional authorization is received from DCM.
- 3) This minor modification must be attached to the original of Major Permit # 29-07, along with all subsequent modifications and/or refinements, and copies of all documents must be readily available on site when a Division representative inspects the project for compliance.
- 4) All conditions and stipulations of the active permit remain in force under this minor modification unless specifically altered herein.
- 5) The permittee and/or contractor shall contact the DCM Transportation Field Representative to schedule a pre-construction conference prior to any in-water pile driving work within the Tar River between between the date of this modification and April 30, 2009.

NOTE: This permit does not eliminate the need to obtain any additional state, federal, or local permits, approvals, or authorizations that may be required, including, but not limited to, any authorizations required from the US Army Corps of Engineers.