



REPLY TO  
ATTENTION OF:

DEPARTMENT OF THE ARMY  
WILMINGTON DISTRICT, CORPS OF ENGINEERS  
69 DARLINGTON AVENUE  
WILMINGTON, NORTH CAROLINA 28403-1343

RECEIVED  
Division of Highways

JUN 23 2011

Preconstruction  
Project Development and  
Environmental Analysis Branch

June 21, 2011

Regulatory Division

Subject: Action ID: SAW-199707161, U.S. 421 from Deep Gap to Boone, NC, TIP No. R-0529

Dr. Gregory J. Thorpe, Ph.D.  
Environmental Management Director  
Project Development & Environmental Analysis  
1598 Mail Service Center  
Raleigh, North Carolina 27699-1598

Dear Dr. Thorpe:

I am responding to your request, dated April 6, 2011, for modification to the existing Department of the Army (DA) permit issued for the above referenced project on May 4, 1998.

Special conditions within the original DA permit required compensatory mitigation to offset the impacts associated with the construction of this project. Specifically, 16,651 stream mitigation credits were required from the North Carolina Department of Transportation (NC DOT) after consideration of avoidance, minimization, and successful on-site stream relocation practices. To help fulfill this mitigation responsibility, the North Carolina Wildlife Resources Commission (NC WRC) entered into an agreement with NC DOT to identify and develop several mitigation sites to alleviate this mitigation component. Now that the NC WRC efforts are nearing completion, information shows that a deficit still remains in the amount of 12,264 linear feet of stream credits. Therefore, NC DOT requests the modification of their permit to allow the North Carolina Ecosystem Enhancement Program (NC EEP) to debit enough credits to alleviate this deficit. A letter from NC EEP dated March 28, 2011, states that they have credits available for this request.

I have determined that the proposed project modification described above is minor and is not contrary to the public interest and therefore, the DA permit is hereby modified.

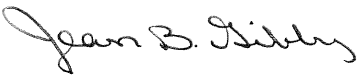
The permit modification for the NC EEP mitigation component now includes the following:

**Compensatory mitigation for the unavoidable impacts to 13,461 linear feet of stream impact associated with the proposed project shall be provided by the Ecosystem Enhancement Program (EEP), as outlined in the letter dated March 28, 2011, from William D. Gilmore, EEP Director. Pursuant to the In-Lieu-Fee**

**Instrument signed July 28, 2010, between the State of North Carolina, Ecosystem Enhancement Program and the US Army Corps of Engineers the EEP will provide 12,264 linear feet of restoration equivalent cold water stream channel in the New River basin (Hydrologic Cataloging Unit 05050001) in accordance with Section F of the instrument.**

It is understood that all conditions of the original permit remain in effect. Should you have any questions, please contact Mr. Monte Matthews, Raleigh Field Office, Regulatory Division, at telephone (919) 554-4884.

Sincerely,

  
for Jefferson M. Ryscavage  
Colonel, U.S. Army  
District Commander

Copies Furnished:

Ms. Carla Dagnino  
PDEA- Natural Environment Unit  
N.C. Department of Transportation  
1548 Mail Service Center  
Raleigh, NC 27699-1598

Mr. Brian Wrenn  
North Carolina Division of Water Quality (NCDWQ)  
1650 Mail Service Center  
Raleigh, North Carolina 27699-1650

Ms. Amy Euliss  
NCDWQ  
585 Waughtown Street  
Winston-Salem, NC 27107

Mr. Brian P. Cole  
United States Fish & Wildlife Service  
160 Zillicoa St.  
Asheville, NC 28801

Ms. Marla Chambers  
NC Wildlife Resource Commission  
12275 Swift Rd.  
Oakboro, NC 28129



North Carolina Department of Environment and Natural Resources

Division of Water Quality  
Coleen H. Sullins  
Director

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JUN 6 2011

Dee Freeman  
Secretary  
DIVISION OF HIGHWAYS  
PDEA-OFFICE OF NATURAL ENVIRONMENT

Beverly Eaves Perdue  
Governor

May 26, 2011

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

Subject: Correction to 401 Water Quality Certification 3858, NCDWQ Project No. 19970616, R-0529 BA, BB, BD  
v. 3  
Watauga

Dear Dr. Thorpe:

This letter is in regards to the Individual Water Quality Certification No. 3858, v. 3 issued May 11, 2011.  
Please note the changes to condition no. 2 listed below.

- Compensatory mitigation for 3937 in the New River Baskin is required. We understand that you have chosen to perform compensatory mitigation for impacts to streams through the North Carolina Ecosystem Enhancement Program (EEP), and that the EEP has agreed to implement the mitigation for the project. EEP has indicated in a letter dated March 28, 2011 that they will assume responsibility for satisfying the federal Clean Water Act compensatory mitigation requirements for the above-referenced project, in accordance with the North Carolina Department of Environment and Natural Resources' Ecosystem Enhancement Program In-Lieu Fee Instrument signed July 28, 2010.

Please keep a copy of this letter with the original certification. If we can be of further assistance, do not hesitate to contact us.

Sincerely,

Coleen H. Sullins  
Director

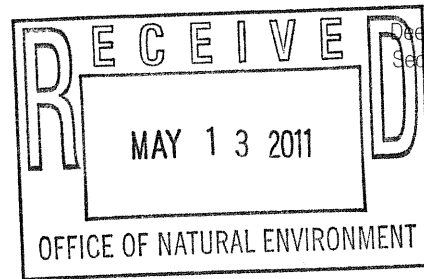
- cc: Monte Matthews, US Army Corps of Engineers, Raleigh Field Office  
Chris Militscher, Environmental Protection Agency (electronic copy only)  
Marla Chambers, NC Wildlife Resources Commission (electronic copy only)  
Jason Elliott, NCDOT, PDEA- Natural Environmental Unit  
Jim Stanfill, Ecosystem Enhancement Program  
Wetlands/401 Transportation Permitting Unit  
File Copy



North Carolina Department of Environment and Natural Resources

Division of Water Quality  
Coleen H. Sullins  
Director

Beverly Eaves Perdue  
Governor



Dee Freeman  
Secretary

May 11, 2011

Dr. Greg Thorpe, PhD., Manager  
Project Development and Environmental Analysis  
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 with ADDITIONAL CONDITIONS for Proposed improvements to US 421 from Deep Gap to Boone in Watauga County, Federal Aid Project No. State Project No. 8.1750601, TIP R-0529.  
NCDWQ Project No. 19970616 v. 3

Dear Dr. Thorpe:

Attached hereto is a modification of Certification No. 3858 issued to The North Carolina Department of Transportation (NCDOT) dated April 20, 1988.

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

Sincerely,

  
for Coleen H. Sullins  
Director

Attachments

- cc: Monte Matthews, US Army Corps of Engineers, Raleigh Field Office
- Chris Militscher, Environmental Protection Agency (electronic copy only)
- Marla Chambers, NC Wildlife Resources Commission (electronic copy only)
- Jason Elliott, NCDOT, PDEA- Natural Environmental Unit
- Jim Stanfill, Ecosystem Enhancement Program
- Wetlands/401 Transportation Permitting Unit
- File Copy

**Modification to the 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act  
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 (NCDWQ) Regulations in 15 NCAC 2H .0500. This certification requires off-site mitigation for 3937 linear feet of stream impacts, and authorizes no additional stream or wetland impacts.

This approval is only valid for the purpose and design that you submitted in your modified application dated received April 15, 2011. All the authorized activities and conditions of certification associated with the original Water Quality Certification dated April 20, 1988 still apply except where superceded by this certification. Should your project change, you are required to notify NCDWQ 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. All other conditions written into previous the Water Quality Certification dated April 20, 2011 for this project still apply.
2. Compensatory mitigation for an additional 3937 linear feet of impact to streams is required. We understand that you have chosen to perform compensatory mitigation for impacts to streams through the North Carolina Ecosystem Enhancement Program (EEP), and that the EEP has agreed to implement the mitigation for the project. EEP has indicated in a letter dated March 28, 2011 that they will assume responsibility for satisfying the federal Clean Water Act 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.

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 you wish to contest any statement in the attached Certification you must file a petition for an administrative hearing. You may obtain the petition form from the office of Administrative hearings. You must file the petition with the office of Administrative Hearings within sixty (60) days of receipt of this notice. A petition is considered filed when it is received in the office of Administrative Hearings during normal office hours. The Office of Administrative Hearings accepts filings Monday through Friday between the hours of 8:00am and 5:00pm, except for official state holidays. The original and one (1) copy of the petition must be filed with the Office of Administrative Hearings.

The petition may be faxed-provided the original and one copy of the document is received by the Office of Administrative Hearings within five (5) business days following the faxed transmission.

The mailing address for the Office of Administrative Hearings is:


Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
Telephone: (919)-733-2698, Facsimile: (919)-733-3478

A copy of the petition must also be served on DENR as follows:

Ms. Mary Penny Thompson, General Counsel  
Department of Environment and Natural Resources  
1601 Mail Service Center  
Raleigh, NC 27699-1601

This the 11th day of May, 2011

DIVISION OF WATER QUALITY

  
for Coleen H. Sullins  
Director

WQC No. 3858

NCDWQ Project No.: \_\_\_\_\_

County: \_\_\_\_\_

Applicant: \_\_\_\_\_

Project Name: \_\_\_\_\_

Date of Issuance of 401 Water Quality Certification: \_\_\_\_\_

**Certificate of Completion**

Upon completion of all work approved within the 401 Water Quality Certification or applicable Buffer Rules, and any subsequent modifications, the applicant is required to return this certificate to the 401 Transportation Permitting Unit, North Carolina Division of Water Quality, 1650 Mail Service Center, Raleigh, NC, 27699-1650. This form may be returned to NCDWQ by the applicant, the applicant's authorized agent, or the project engineer. It is not necessary to send certificates from all of these.

***Applicant's Certification***

I, \_\_\_\_\_, hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

***Agent's Certification***

I, \_\_\_\_\_, hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

***Engineer's Certification***

\_\_\_\_\_ Partial \_\_\_\_\_ Final

I, \_\_\_\_\_, as a duly registered Professional Engineer in the State of North Carolina, having been authorized to observe (periodically, weekly, full time) the construction of the project, for the Permittee hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature \_\_\_\_\_ Registration No. \_\_\_\_\_

Date \_\_\_\_\_



March 28, 2011

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 R-0529 BA/BB/BD (R-0529), US 421 Widening, Watauga County, New River Basin – Cataloging Unit 05050001; USACE Action ID 1997-07161

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 16,651 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 R-0529 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 R-0529 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 five are now complete and going through the close out process. Monitoring activities for the last project should be completed by 2013. Below is a table of the mitigation projects and associated stream mitigation credits developed by NCWRC specifically for TIP R-0529:

Site Name	County	Phase	Feet	Ratio	Credits
UT to Peak Creek (Bare)	Ashe	Long Term Management	2,183	3:1	728
UT to Laxon Creek (Carp)	Watauga	Long Term Management	538	1:1	538
Meat Camp Creek (Miller)	Watauga	Long Term Management	652	3:1	217
Laxon Creek (Racey)	Watauga	Long Term Management	1,160	1:1	1,160
Obids Creek (Wild)	Ashe	Long Term Management	1,819	3:1	606
Peak Creek (Bowlin)	Ashe	Monitoring Year 3	1,707	1.5:1	1,138
<b>Total Amount of Mitigation Produced</b>			<b>8,059</b>		<b>4,387</b>

NOTE: Information above was as of March 15, 2011.

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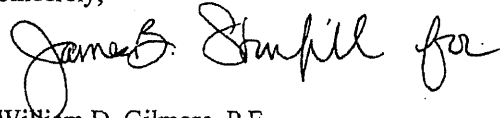


Mr. Greg Thorpe  
March 28, 2011  
Page Two – TIP R-0529 BA/BB/BD

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 12,264 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.

Sincerely,



William D. Gilmore, P.E.  
EEP Director

cc: Mr. Scott McLendon, USACE – Wilmington Regulatory Field Office  
Mr. Todd Tugwell, USACE – Falls Lake  
Mr. Brian Wrenn, Division of Water Quality, Wetlands/401 Unit  
Ms. Linda Fitzpatrick, NCDOT – PDEA  
File: R-0529 BA/BB/BD

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