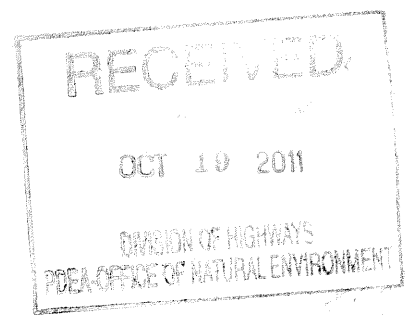




REPLY TO
ATTENTION OF:

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

October 19, 2011



Regulatory Division

Action ID No. SAW-1994-00590, U.S. 220 and NC 73 Extension, Ellerbe Bypass and Connector, Richmond and Montgomery Counties, TIP Nos. R-2231 and R-3303

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 28, 2011, for modification to the existing Department of the Army (DA) permit issued for the above referenced project on July 11, 2003.

Special condition D of the original DA permit required the use of the Haithcock Road Mitigation Site to offset stream impacts associated with the project. The Haithcock Road Mitigation Site was not constructed because the property became unavailable, resulting in a total mitigation deficit of 3,924 linear feet of stream channel. The permit modification is proposed to use the North Carolina Ecosystem Enhancement Program to restore 3,924 linear feet of warm water stream channel to fulfill the project's compensatory mitigation requirements.

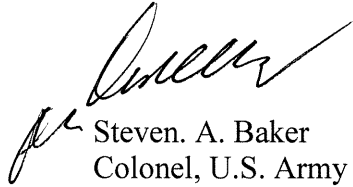
I have determined that the proposed project modification described above is minor and is not contrary to the public interest and therefore, the DA permit is hereby modified.

The permit modification is as follows:

1. Compensatory mitigation for the loss of stream channel associated with the constructed project shall be provided by the Ecosystem Enhancement Program (EEP), as outlined in the letter dated July 11, 2011 from William D. Gilmore, EEP Director. Pursuant to the EEP 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 3,924 linear feet of restoration equivalent warm water stream channel in the Yadkin River Basin (Hydrologic Cataloging Unit 03040104) 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. Ronnie Smith, Wilmington Field Office, Regulatory Division, at telephone (910) 251-4829.

Sincerely,



Steven. A. Baker
Colonel, U.S. Army
District Commander

Copies Furnished:

Ms. Carla Dagnino
PDEA- Natural Environment Unit
North Carolina Department of Transportation
1598 Mail Service Center
Raleigh, North Carolina 27699-1598

Mr. Philip Harris
PDEA- Natural Environment Unit
North Carolina Department of Transportation
1598 Mail Service Center
Raleigh, North Carolina 27699-1598

Ms. Leilani Paugh
PDEA- Natural Environment Unit
North Carolina Department of Transportation
1598 Mail Service Center
Raleigh, North Carolina 27699-1598

Mr. Art King
Division Environmental Officer
North Carolina Department of Transportation, Division 8
Post Office Box 1067
Aberdeen, North Carolina 28315

Mr. Tim Johnson, P.E.
Division Engineer
North Carolina Department of Transportation, Division 8
Post Office Box 1067
Aberdeen, North Carolina 28315

Mr. Brian Wrenn, Transportation Permitting Unit, Supervisor
North Carolina Division of Water Quality
585 Waughtown Street
Winston-Salem, North Carolina 27107-2241

Mr. David Wainwright
Division of Water Quality
North Carolina Department of
Environment and Natural Resources
Transportation Permitting Unit
1650 Mail Service Center
Raleigh, North Carolina 27699-1621

Mr. Gary Jordan
United States Fish and Wildlife Service
Fish and Wildlife Enhancement
Post Office Box 33726
Raleigh, North Carolina 27636-3726

Mr. Travis W. Wilson
North Carolina Wildlife Resource Commission
1142 I-85 Service Road
Creedmoor, North Carolina 27522

Mr. Chris Militcher
United States Environmental Protection Agency
c/o Federal Highway Administration
310 New Bern Avenue, Room 206
Raleigh, North Carolina 27601

Ms. Renee Gledhill-Early
North Carolina Department of Cultural Resources
4617 Mail Service Center
Raleigh, North Carolina 27699

Ms. Beth Harmon
North Carolina Ecosystem Enhancement Program
1652 Mail Service Center
Raleigh, North Carolina 27699

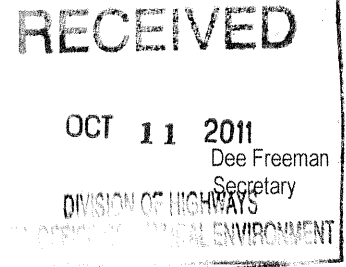


North Carolina Department of Environment and Natural Resources

Division of Water Quality
Coleen H. Sullins
Director

Beverly Eaves Perdue
Governor

October 3, 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

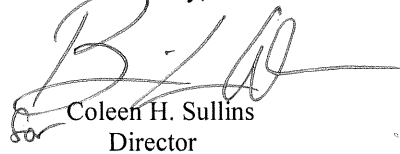
Subject: Modification to the 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act with **ADDITIONAL CONDITIONS** for Proposed construction of Ellerbe Bypass and Ellerbe Connector (NC 73 Connector in Richmond and Montgomery Counties, WBS Nos. 34527.1.1 and 34398.1.1, TIP Nos. R-2231(A, B, CA and CB) and R-3303. NCDWQ Project No. 00-0874v. 6

Dear Dr. Thorpe:

Attached hereto is a modification of Certification No. 3419 issued to The North Carolina Department of Transportation (NCDOT) dated April 1, 2003 and subsequent modifications dated April 28, 2004, September 28, 2004 and December 22, 2006.

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

Sincerely,



Coleen H. Sullins
Director

Attachments

- cc: Ronnie Smith, US Army Corps of Engineers, Wilmington Field Office
- Tim Johnson, PE, Division 6 Engineer
- Art King, Division 6 Environmental Officer
- Chris Militscher, Environmental Protection Agency (electronic copy only)
- Travis Wilson, NC Wildlife Resources Commission (electronic copy only)
- Lelani Paugh, NCDOT, Natural Environment Unit
- William D Gilmore, PE, Ecosystem Enhancement Program
- Sonia Carrillo, NCDWQ Central Office
- 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 does not authorize the NCDOT to impact any additional jurisdictional resources in Richmond or Moore Counties. The compensatory mitigation component of this project shall be administered pursuant to the modification dated received May 6, 2011.

The application provides adequate assurance that the discharge of fill material into the waters of the Yadkin and Lumber River Basins 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 May 6, 2011. All the authorized activities and conditions of certification associated with the original Water Quality Certification dated April 1, 2003 and subsequent modifications dated April 28, 2004, September 28, 2004 and December 22, 2006 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 Water Quality Certifications dated April 1, 2003, April 28, 2004, September 28, 2004 and December 22, 2006.
2. This modification is applicable only to the additional proposed activities. All of the authorized activities and conditions of certification associated with the original Water Quality Certification dated April 1, 2003 and subsequent modifications still apply except where superceded by this certification.
3. Compensatory mitigation for 3429 linear feet of impact to streams is still required to satisfy the mitigation requirements for this certification. 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 April 26, 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.

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 3rd day of October 2011

DIVISION OF WATER QUALITY


for Coleen H. Sullins
Director

WQC No. 3419

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 _____

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 _____



July 11, 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: EEP Mitigation Acceptance Letter: **R-2231 and R-3303**, US 220 (Ellerbe Bypass) and NC 73 Extension (Ellerbe Connector), Richmond and Montgomery Counties

References: USACE Individual Permit issued July 11, 2003; USACE Action ID 1994-00590

NCDWQ Water Quality Certification issued April 1, 2003; NCDWQ Project Number 2000-0874

The purpose of this letter is to notify you that the Ecosystem Enhancement Program (EEP) will provide the unmet stream mitigation for the subject project. Based on the information supplied by you on February 9, 2006 and April 21 and July 8, 2011, the impacts are located in CU 03040104 of the Yadkin River Basin in the Southern Piedmont (SP) Eco-Region, and are as follows:

Yadkin 03040104 SP	Stream			Wetlands			Buffer (Sq. Ft.)	
	Cold	Cool	Warm	Riparian	Non-Riparian	Coastal Marsh	Zone 1	Zone 2
Mitigation Units	0	0	3,924	0	0	0	0	0

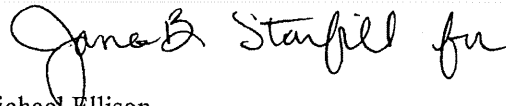
The USACE and NCDWQ issued permits authorizing the impacts of wetlands and stream for the construction of the Ellerbe Bypass and the Ellerbe Connector on July 11, 2003 and April 1, 2003, respectively. The project is located in the Lumber River basin cataloging unit 03040203 and Yadkin River basin cataloging unit 03040104. Wetland and stream impacts associated with the project were to be mitigated through on-site natural stream design, Key Branch, and a full delivery provider. The full delivery provider retained by the NCDOT failed to implement the stream mitigation in accordance with the executed contract. In order to fully offset the stream impacts associated with this project, the NCDOT requires additional stream mitigation from EEP. At this time, the NCDOT does not require additional wetland mitigation for this project.

Dr. Thorpe
July 11, 2011
TIP Numbers R-2231 / R-3303
Page Two

This mitigation acceptance letter replaces the mitigation acceptance letters issued on June 2, 2006 and April 26, 2011. EEP commits to implementing sufficient stream mitigation credits to offset the impacts associated with this project in accordance with the N.C. Department of Environment and Natural Resources' Ecosystem Enhancement Program In-Lieu Fee Instrument dated July 28, 2010. If the above referenced impact amounts are revised, then this mitigation acceptance letter will no longer be valid and a new mitigation acceptance letter will be required from EEP.

If you have any questions or need additional information, please contact Ms. Beth Harmon at 919-715-1929.

Sincerely,



Michael Ellison
EEP Deputy Director

cc: Mr. Ronnie Smith, USACE – Wilmington Regulatory Field Office
Mr. Brian Wrenn, Division of Water Quality, Wetlands/401 Unit
File: R-2231 Revised

Restoring... Enhancing... Protecting Our State

