



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY PERDUE
GOVERNOR

EUGENE CONTI
SECRETARY

December 15, 2010

MEMORANDUM TO: Mr. J. Wally Bowman, PE
Division Five Engineer

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

SUBJECT: Durham County, Improvements to SR 1959 (South Miami Boulevard) from south of SR 2112 (Methodist St) to north of SR 1960 (Bethesda Avenue); T.I.P. Number U-4011; Federal Aid Project No. STP-1959(2); WBS No. 40221.1.1

Attached are the renewals to the U.S. Army Corps of Engineers Section 404 Nationwide Permit Numbers 23 & 33, N.C. Division of Water Quality Section 401 General Water Quality Certification and Riparian Buffer Authorization for the above referenced project. The Section 401 Certification and Riparian Buffer Authorization expire when the Section 404 Permits expire. Therefore, by renewing the Section 404 permits for this project, all environmental permits have been renewed.

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
Mr. Chris Murray, 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. Dewayne Sykes, P.E., Utilities Unit
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
Ms. Beth Harmon, EEP
Mr. Eric Midkiff, P.E., PDEA Central Region Unit Head

PROJECT COMMITMENTS

Durham County
Improvements to SR 1959 (South Miami Boulevard) from south of SR 2112
(Methodist Street) to north of SR 1960 (Bethesda Avenue)
WBS No. 40221.1.1
Federal Project Number STP-1959(2)
TIP No. U-4011

Commitments Developed Through Project Development and Design

Project Development and Environmental Analysis Branch, Roadway Design Unit, and Safe Routes to School Program:

NCDOT will coordinate during final design of the project with school personnel at Bethesda Elementary School and Bethesda Christian Academy to provide appropriate school crossings on the project.

Roadway Design Unit, Program Development Branch:

Sidewalks will be provided on both sides of the South Miami Boulevard project. The City of Durham will be responsible for maintenance and liability of the proposed sidewalks, as well as sharing the cost of construction according to the NCDOT requirements for a municipality with populations above 100,000 (50% NCDOT and 50% municipality).

Wide outside lanes (14-foot) have been included to accommodate bicycle traffic.

Project Development and Environmental Analysis Branch, Roadway Design Unit, and Division 5 Right-of-Way Office:

Approximately 6-10 gravesites will be relocated within the cemetery belonging to Bethesda Baptist Church. Impacts to the cemetery will be minimized to the extent possible during final design of the project. NCDOT will coordinate with Bethesda Baptist Church to relocate the gravesites within the existing cemetery property.

Commitments Developed Through the Permitting Process

NEU-Onsite Mitigation Group:

NCDOT shall mitigate for 61 linear feet of unavoidable impact to perennial stream, associated with this project, by debiting 61 linear feet if stream restoration from the Jeffreys Warehouse Mitigation Site (aka JALO), described in the September 17, 2004 "Jeffreys Warehouse Conceptual Mitigation Plan, Wayne County, North Carolina".

NEU-Engineering Group:

The permittee shall monitor the required Jeffreys Warehouse stream restoration in accordance with the Monitoring Plan, Stream, in the September 17, 2004 Mitigation Plan, Page 25.

**U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT**

Action ID: **2005-20914**

County: **Durham** USGS Quad: **Southeast Durham**

GENERAL PERMIT (REGIONAL AND NATIONWIDE) VERIFICATION

Property Owner: **NCDOT; Division of Highways
ATTN: Gregory J. Thorpe, Ph.D**
Mailing Address: **1598 Mail Service Center
Raleigh, North Carolina 27699-1598**
Telephone No.: **(919) 431-1605 (Sara Easterly)**

Location of property (road name/number, town, etc.): **TIP U-4011; On SR 1959 (South Miami Boulevard), from south of Methodist Street to north of Bethesda Avenue, southeast of Durham, North Carolina., southeast of of Durham, North Carolina.**

Site Coordinates: **35.940N -78.840W** Waterway: **UT to Stirrup Iron Creek** River Basin: **Neuse** HUC: **03020201**

Description of projects area and activity: **TIP #U-4011; Discharge of fill material for pipe replacement, riprap stabilization, and temporary dewatering, related to improvements to South Miami Boulevard, in accordance with the drawings submitted on 3/11/2009, and subject to the attached special conditions.**

Applicable Law: Section 404 (Clean Water Act, 33 USC 1344)
 Section 10 (Rivers and Harbors Act, 33 USC 403)
Authorization: **Nationwide General Permit Number(s): 23 & 33**

Summary of Authorized Impacts and Required Mitigation

	Open Water (ac)		Wetland (ac)		Unimportant Stream (lf)		Important Stream (lf)	
	Temporary	Permanent	Temporary	Permanent	Temporary	Permanent	Temporary	Permanent
Impact Totals	0	0.02	0	0	10	16	11	61
Total Loss of Waters of the U.S. (ac)			0	Total Loss of Waters of the U.S. (lf)				72
Required Wetland Mitigation (ac)			0	Required Stream Mitigation (lf)		61	Permittee	

Note 1: **At Permit Site 3, the streambed should be excavated and the riprap for the erosion pad placed to be no higher than the original streambed. No wetland mitigation is required.**

Note 2: **This verification replaces the previous verification dated 4/2/2009. The wetland mitigation requirement has not changed.**

Special Permit Condition: **STREAM MITIGATION**

a) **NCDOT shall mitigate for 61 linear feet of unavoidable impact to perennial stream, associated with this project, by debiting 61 linear feet of stream restoration from the Jeffreys Warehouse Mitigation Site (aka JALO), described the September 17, 2004 "Jeffreys Warehouse Conceptual Mitigation Plan, Wayne County, North Carolina".**

b) **The permittee shall monitor the required Jeffreys Warehouse stream restoration in accordance with the Monitoring Plan, Stream, in the September 17, 2004 Mitigation Plan, Page 25.**

Your work is authorized by the above referenced permit provided it is accomplished in strict accordance with the attached conditions and your submitted plans. Any violation of the attached conditions or deviation from your submitted plans may subject the permittee to a stop work order, a restoration order and/or appropriate legal action.

This verification is valid until the NWP is modified, reissued, or revoked. All of the existing NWPs are scheduled to be modified, reissued, or revoked prior to March 18, 2012. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued. Furthermore, if you commence or are under contract to commence this activity before the date that the relevant nationwide permit is modified or revoked, you will have twelve (12) months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this nationwide permit.

Activities subject to Section 404 (as indicated above) may also require an individual Section 401 Water Quality Certification. You should contact the NC Division of Water Quality (telephone (919) 733-1786) to determine Section 401 requirements.

This Department of the Army verification does not relieve the permittee of the responsibility to obtain any other required Federal, State or local approvals/permits.

If there are any questions regarding this verification, any of the conditions of the Permit, or the Corps of Engineers regulatory program, please contact **Eric Alsmeyer** at telephone (919) 554-4884, ext. 23.

Corps Regulatory Official _____ Date: **12/3/2010** Verification Expiration Date: **3/18/2012**

The Wilmington District is committed to providing the highest level of support to the public. To help us ensure we continue to do so, please complete the Customer Satisfaction Survey located at our website at <http://per2.nwp.usace.army.mil/survey.html> to complete the survey online.

Copy Furnished: **NCDOT-NEU (Sara Easterly) by e-mail**

Determination of Jurisdiction:

- Based on preliminary information, there appear to be waters of the US including wetlands within the above described project area. This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process (Reference 33 CFR Part 331).
- There are Navigable Waters of the United States within the above described project area subject to the permit requirements of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- There are waters of the US and/or wetlands within the above described project area subject to the permit requirements of Section 404 of the Clean Water Act (CWA)(33 USC § 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- The jurisdictional areas within the above described project area have been identified under a previous action. Please reference the jurisdictional determination issued on 4/2/2009.

**WILMINGTON DISTRICT
POST-CONSTRUCTION COMPLIANCE FORM**

Action ID Number: 2005-20914

County: Durham

Permittee: NCDOT; Division of Highways; TIP U-4011; On SR 1959 (South Miami Boulevard), from south of Methodist Street to north of Bethesda Avenue, southeast of of Durham, North Carolina.

Date Permit Issued: 12/3/2010

Project Manager: Eric Alsmeyer

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

**US Army Corps of Engineers, Wilmington District
Raleigh Regulatory Field Office
3331 Heritage Trade Drive, Suite 105
Wake Forest, NC 27587**

Please note that your permitted activity is subject to a compliance inspection by a U. S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and condition of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: NCDOT; Division of Highways;	File Number: 2005-20914	Date: 12/3/2010
Attached is:		See Section below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

- A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.**
- ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
 - OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.
- B: PROFFERED PERMIT: You may accept or appeal the permit**
- ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
 - APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.**
- D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.**
- ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
 - APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the district engineer. This form must be received by the division engineer within 60 days of the date of this notice.
- E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.**

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Jean Manuele
U.S. Army Corps of Engineers,
Raleigh Regulatory Field Office
3331 Heritage Trade Drive, Suite 105
Wake Forest, North Carolina 27587

If you only have questions regarding the appeal process you may also contact:

Mr. Mike Bell, Administrative Appeal Review Officer
CESAD-ET-CO-R
U.S. Army Corps of Engineers, South Atlantic Division
60 Forsyth Street, Room 9M15
Atlanta, Georgia 30303-8801

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

<hr/> Signature of appellant or agent.	Date:	Telephone number:
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For appeals on Initial Proffered Permits and approved Jurisdictional Determinations send this form to:

District Engineer, Wilmington Regulatory Division, Attn: Jean Manuele, Project Manager, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina 27587

For Permit denials and Proffered Permits send this form to:

Division Engineer, Commander, U.S. Army Engineer Division, South Atlantic, Attn: Mr. Mike Bell, Administrative Appeal Officer, CESAD-ET-CO-R, 60 Forsyth Street, Room 9M15, Atlanta, Georgia 30303-8801

MEMORANDUM FOR RECORD

SUBJECT: Consideration of Compensatory Mitigation and Potential Impacts to Endangered Species, Cultural Resources and Essential Fish Habitat.

1. Action ID: **2005-20914**

2. Project Name and Location: **NCDOT; Division of Highways; TIP U-4011; On SR 1959 (South Miami Boulevard), from south of Methodist Street to north of Bethesda Avenue, southeast of Durham, North Carolina.,so utheast of of Durham, North Carolina.**

3. Mitigation [Section 404(b)(1) Guidelines].

a. Has applicant avoided and minimized impacts to the maximum practicable extent? **YES**

If NO, Explain:

b. Is compensatory mitigation necessary? ***Yes**

Explain: **Permanent loss of *wetlands will be mitigated through payment to NC-EEP for * acre of restoration equivalent wetland mitigation. *No loss of stream. The required mitigation is appropriate to compensate for the permitted impacts. "Mitigation for this project is proposed to be provided by the North Carolina Ecosystem Enhancement Program (NCEEP), which deviates from the options presented in the Final Mitigation Rule, 33 CFR chapter II, §332.3(b)(1)-(6). The NCEEP has an approved In-Lieu Fee Instrument, dated July 28, 2010, which establishes procedures for the delivery and timing of mitigation. The NCEEP has been in operation since 2003, and has established a record for providing successful, consolidated mitigation sites, utilizes watershed plan procedures. As required by Section IV(f)(3)(c) of the NCEEP Instrument, Mitigation provided by NCEEP is also constructed and functioning in advance of NCDOT impacts, resulting in reduced temporal lag and reduced uncertainty over project success. Because of these factors, it has been determined that the use of NCEEP is environmentally preferable to other alternatives, which is consistent with the criteria presented in §332.3(a)(1) of the Rule."**

4. Endangered Species (Section 7 of the ESA).

a. Will any threatened or endangered species or their critical habitats be affected by this project? **NO**

If YES, describe steps taken to address concerns: ***No Federal T or E species are known to exist in the project area, per the *9/2010 Natural Heritage GIS database. I concur with NCDOT's assessment of effects to Federal T or E species in their 3/11/2009 PCN application.**

5. Cultural Resources (Section 106 of the NHPA).

a. Will any Cultural Resources be impacted by this project? **NO**

b. If YES, describe steps taken to address concerns: **(No cultural resources are known to occur in the immediate project area, per the latest NC-SHPO GIS databas e).**

6. Essential Fish Habitat (50 CFR Part 600, Magnuson-Stevens Act).

a. Is this a project that "may adversely affect essential fish habitat"? **No**

b. If YES, describe steps taken to address concerns:

Corps Regulatory Official: _____

CESAW-RG-R
Application SAW-2010-*

MEMORANDUM FOR RECORD

SUBJECT: Department of the Army Memorandum Documenting Nationwide Permit/Regional General Permit Verification

Applicant: **

Project Location (*Waterway, Section, Township, Range, City, County, State*): **

Pre-Construction Notification Receipt Date: Complete? Yes No

Additional Information Requested Date:

Pre-Construction Notification Complete Date:

Waters of the US:

*see Jurisdictional Determination form(s) and/or Preliminary JD letter(s) dated:

Authority: Section 10 Section 404 Section 103

Project Description (*Describe activities in waters of the U.S. considered for verification*):

Type of Permit Requested: NWP # _____ RGP # _____

Pre-construction Notification Required: Yes No

Waiver required to begin work (*see GC 27 (a)(2) as applied to appropriate NWP*s):
Yes No

Rationale:

Coordination with Agencies/Tribes Needed: Yes No Date: _____
Resolution:

Commenting Agencies:

- US Fish and Wildlife Service
- US Environmental Protection Agency
- National Marine Fisheries Service
- State Agency (list commenting state agencies)
- State Historic Preservation Office
- Other:

Substantive Issues Raised and Corps Resolution (*Consideration of Comments*):

Compliance with Other Federal Laws (*If specific law is not applicable write N/A*):

- a) Endangered Species Act:
Name of species present:
Effects determination:
Date of Service(s) concurrence:
Basis for "no effect" determination:

Additional information (optional):

b) Magnuson-Stevens Act (Essential Fish Habitat):

Name of species present: Not Applicable

Effects determination:

Date of Service(s) concurrence: Basis for "no effect" determination:

Additional information (optional):

c) Section 106 of the National Historic Preservation Act:

Known site present: yes no

Survey required/conducted: yes no

Effects determination:

Rationale:

Date consultation complete (if necessary):

Additional information (optional):

d) Section 401 Water Quality Certification:

Individual certification required: yes no

Issued Waived Denied

e) Coastal Zone Management Act:

Individual certification required: yes no

Issued Waived Denied

Additional information (optional):

f) Wild and Scenic Rivers Act:

Project located on designated or "study" river: yes no

Managing Agency:

Date written determination provided that the project will not adversely affect the Wild and Scenic River designation or study status:

Additional information (optional):

g) Other

Special Conditions Required (include rationale for each required condition/explanation for requiring no special conditions): yes no

Compensatory Mitigation Determination: The applicant has avoided and minimized impacts to the maximum extent practicable.

- (1) Is compensatory mitigation required for unavoidable impacts to jurisdictional aquatic resources to reduce the individual and cumulative adverse environmental effects to a minimal level?
 yes no [If "no," do not complete the rest of this section and include an explanation of why not here]
- (2) Is the impact in the service area of an approved mitigation bank? yes no
 - i. Does the mitigation bank have appropriate number and resource type of credits available? yes no
- (3) Is the impact in the service area of an approved in-lieu fee program? yes no
 - i. Does the in-lieu fee program have appropriate number and resource type of credits available? yes no
- (4) Check the selected compensatory mitigation option(s):

- mitigation bank credits
- in-lieu fee program credits
- permittee-responsible mitigation under a watershed approach
- permittee-responsible mitigation, on-site and in-kind
- permittee-responsible mitigation, off-site and out-of-kind

(5) If a selected compensatory mitigation option deviates from the order of the options presented in §332.3(b)(2)-(6), explain why the selected compensatory mitigation option is environmentally preferable. Address the criteria provided in §332.3(a)(1) (i.e., the likelihood for ecological success and sustainability, the location of the compensation site relative to the impact site and their significance within the watershed, and the costs of the compensatory mitigation project): "Mitigation for this project is proposed to be provided by the North Carolina Ecosystem Enhancement Program (NCEEP), which deviates from the options presented in the Final Mitigation Rule, 33 CFR chapter II, §332.3(b)(1)-(6). The NCEEP has an approved In-Lieu Fee Instrument, dated July 28, 2010, which establishes procedures for the delivery and timing of mitigation. The NCEEP has been in operation since 2003, and has established a record for providing successful, consolidated mitigation sites, utilizes watershed plan procedures. As required by Section IV(f)(3)(c) of the NCEEP Instrument, Mitigation provided by NCEEP is also constructed and functioning in advance of NCDOT impacts, resulting in reduced temporal lag and reduced uncertainty over project success. Because of these factors, it has been determined that the use of NCEEP is environmentally preferable to other alternatives, which is consistent with the criteria presented in §332.3(a)(1) of the Rule."

Determination (Reference General Condition 27(e)):

The proposed activity, with proposed mitigation (if applicable) would result in no more than minimal individual and cumulative adverse environmental effects and would not be contrary to the public interest. *[add in, if applicable: "provided the special conditions and/or modifications identified in the above are incorporated."]* This project complies with all terms and conditions of NWP (add #)/RGP (add #)/GP (add #) including any applicable regional conditions.

PREPARED BY:

Project Manager _____ Date:

REVIEWED BY:

Chief, Regulatory XX District *(insert appropriate level reviewer)* _____ Date

APPROVED BY:

Colonel, Corps of Engineers, Commanding *(insert appropriate level approver)* _____ Date