

ROY COOPER
Governor
MICHAEL S. REGAN
Secretary
S. DANIEL SMITH
Director



March 5, 2020

Mr. Hon Yeung
NCDOT, Division 2
1037 W.H. Smith Blvd.
Greenville, NC 27835

Subject: Modification of 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act and Neuse Buffer Authorization with ADDITIONAL CONDITIONS for the proposed construction of the NC 43 Connector from US 17 Business (Dr. M.L.K. Jr. Boulevard) to US 70 in Craven County. TIP No. R-4463A
NCDWR Project No. 20070932 v.3

Dear Mr. Yeung:

Attached hereto is a modification of Certification No. WQC003673 issued to The North Carolina Department of Transportation (NCDOT) dated March 5, 2020.

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

Sincerely,
DocuSigned by:

Amy Chapman

9C9886312DCD474...

S. Daniel Smith
Director

cc: Tom Steffens, US Army Corps of Engineers, Washington Field Office
Gary Jordan, US Fish and Wildlife Service
Travis Wilson, NC Wildlife Resources Commission
Cathy Brittingham, Division of Coastal Management
Stephen Lane, Division of Coastal Management
Beth Harmon, Division of Mitigation Services
Garcy Ward, NCDWR Washington Regional Office
File Copy



**401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act and Neuse 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 Resources (NCDWR) Regulations in 15 NCAC 2H .0500. This certification authorizes the NCDOT to fill 0.95 acres of open water for the purpose of beach restoration in Ocracoke in Craven County. The project shall be constructed pursuant to the application dated received January 17, 2020 and additional information received February 19, 2020 and February 25, 2020. The authorized impacts are as described below:

Wetland Impacts in the Neuse River Basin

Site	Wetland Fill Permanent (ac)	Wetland Fill Temporary (ac)	Wetland Excavation (ac)	Wetland Mechanized Clearing (ac)	Wetland Hand Clearing (ac)
1	0.05	0.05	0.12	--	--
2	0.29	--	0.19	--	--
3	0.20	0.07	0.08	--	--
4	0.02	--	<0.01	--	0.04
5	0.07	--	0.03	0.04	--
6	--	--	0.03	0.03	--
Total	0.62	0.11	0.44	0.08	0.04

Stream Impacts in the Neuse River Basin

Site	Stream Impact Permanent (lf)	Stream Impacts Temporary (lf)	Total
4	89	42	131
5	42	40	82
6	66	39	105
Total	197	121	318

Riparian Buffer Impacts in the Neuse River Basin

Site	Zone 1 Impact (sq ft)	minus Wetlands in Zone 1 (sq ft)	= Zone 1 Buffers (not wetlands) (sq ft)	Zone 1 Buffer Mitigation Required (using 3:1 ratio)	Zone 2 Impact (sq ft)	minus Wetlands in Zone 2 (sq ft)	= Zone 2 Buffers (not wetlands) (sq ft)	Zone 2 Buffer Mitigation Required (using 1.5:1 ratio)
5	3683	1731	1,952	n/a	3009	257	2752	n/a
5A	0	0	0	n/a	864	0	864	n/a
5B	2264	2221	43	129*	1906	472	1,434	2,151*
6	5045	2108	2,937	n/a	2640	391	2,249	n/a
Total	10,992	6,060	4,932	129	8,419	1,120	7,299	2,151

n/a = impacts < 150 lf or 1/3 ac, no mitigation required

* = road impacts other than crossings, mitigation required

The application provides adequate assurance that the discharge of fill material onto the beach in conjunction with the proposed activity 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 application dated received January 17, 2020 and additional information received February 19, 2020 and February 25, 2020. Should your project change, you are required to notify NCDWR 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 impacts, for this project (now or in the future) are required the applicant should contact NCDWR as a modification of this Certification may be required. 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. Compensatory mitigation for impacts to 43 square feet of protected riparian buffers in Zone 1 and 1,434 square feet of protected riparian buffers in Zone 2 shall be required. Applying a 3:1 ratio for Zone 1 impacts and a 1.5:1 ratio for Zone 2 impacts results in a mitigation requirement of **129** square feet and **2,151** square feet respectively (refer to the buffer impact table for a breakdown of mitigation totals). We understand that you have chosen to perform compensatory mitigation for impacts to protected buffers through use of the North Carolina Division of Mitigation Services (DMS) (formerly NCEEP). Mitigation for unavoidable impacts to Neuse Riparian Buffers shall be provided in the Neuse River Basin and done in accordance with 15A NCAC .02B .0295. The DMS has indicated in a letter dated February 20, 2020 that they will assume responsibility for satisfying the compensatory mitigation requirements for the above-referenced project, in accordance with DMS's Mitigation Banking Instrument signed June 14, 2016.
2. The issuance of this certification does not exempt the Permittee from complying with any and all statutes, rules, regulations, or ordinances that may be imposed by other government agencies (i.e. local, state, and federal) having jurisdiction, including but not limited to applicable buffer rules, stormwater management rules, soil erosion and sedimentation control requirements, etc.
3. The Permittee shall ensure that the final design drawings adhere to the permit and to the permit drawings submitted for approval. [15A NCAC 02H .0507(c) and 15A NCAC 02H .0506 (b)(2) and (c)(2)]
4. The outside buffer, wetland or water boundary located within the construction corridor approved by this authorization shall be clearly marked by highly visible fencing prior to any land disturbing activities. Impacts to areas within the fencing are prohibited unless otherwise authorized by this certification. [15A NCAC 02H.0501 and .0502]
5. During the construction of the project, no staging of equipment of any kind is permitted in waters of the U.S., or protected riparian buffers. [15A NCAC 02H.0506(b)(2)]
6. Unless otherwise approved in this certification, placement of culverts and other structures in open waters and streams shall be placed below the elevation of the streambed by one foot for all culverts with a diameter greater than 48 inches, and 20 percent of the culvert diameter for culverts having a diameter less than 48 inches, to allow low flow passage of water and aquatic life. Design and placement of culverts and other structures including temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands or streambeds or banks, adjacent to or upstream and downstream of the above structures. The applicant is required to provide evidence that the equilibrium is being maintained if requested in writing by NCDWR. If this condition is unable to be met due to bedrock or other limiting features encountered during construction, please contact NCDWR for guidance on how to proceed and to determine whether or not a permit modification will be required. [15A NCAC 02H.0506(b)(2)]
7. If multiple pipes or barrels are required, they shall be designed to mimic natural stream cross section as closely as possible including pipes or barrels at flood plain elevation and/or sills where appropriate. Widening the stream channel should be avoided. Stream channel widening at the inlet or outlet end of structures typically decreases water velocity causing sediment deposition that requires increased maintenance and disrupts aquatic life passage. [15A NCAC 02H.0506(b)(2)]



8. All work in or adjacent to stream waters shall be conducted in a dry work area. Approved BMP measures from the most current version of NCDOT Construction and Maintenance Activities manual such as sandbags, rock berms, cofferdams and other diversion structures shall be used to prevent excavation in flowing water. [15A NCAC 02H.0506(b)(3) and (c)(3)]
9. The dimension, pattern and profile of the stream above and below the crossing shall not be modified. Disturbed floodplains and streams shall be restored to natural geomorphic conditions. [15A NCAC 02H.0506(b)(2)]
10. The use of rip-rap above the Normal High Water Mark shall be minimized. Any rip-rap placed for stream stabilization shall be placed in stream channels in such a manner that it does not impede aquatic life passage. [15A NCAC 02H.0506(b)(2)]
11. Any rip-rap required for proper culvert placement, stream stabilization or restoration of temporarily disturbed areas shall be restricted to the area directly impacted by the approved construction activity. All rip-rap shall be placed such that the original stream elevation, and streambank contours are restored and maintained. Placement of rip-rap or other approved materials shall not result in de-stabilization of the stream bed or banks upstream or downstream of the area or in a manner that precludes aquatic life passage. [15A NCAC 02H.0506(b)(2)]
12. Any rip-rap used for stream or shoreline stabilization shall be of a size and density to prevent movement by wave, current action, or stream flows and shall consist of clean rock or masonry material free of debris or toxic pollutants. Rip-rap shall not be installed in the streambed except in specific areas required for velocity control and to ensure structural integrity of bank stabilization measures. [15A NCAC 02H.0506(b)(2)]
13. All moratoriums on construction activities established by the NC Wildlife Resources Commission (WRC), US Fish and Wildlife Service (USFWS), NC Division of Marine Fisheries (DMF), National Marine Fisheries Service (NMFS) shall be implemented. Exceptions to this condition require written approval by the resource agency responsible for the given moratorium. A copy of the approval from the resource agency shall be forwarded to DWR.
14. When applicable, all construction activities shall be performed and maintained in full compliance with G.S. Chapter 113A Article 4 (Sediment and Pollution Control Act of 1973). Regardless of applicability of the Sediment and Pollution Control Act, all projects shall incorporate appropriate Best Management Practices for the control of sediment and erosion so that no violations of state water quality standards, statutes, or rules occur. [15A NCAC 02H .0506{b}(3) and (c)(3) and 15A NCAC 02B .0200]
15. Design, installation, operation, and maintenance of all sediment and erosion control measures shall be equal to or exceed the requirements specified in the most recent version of the North Carolina Sediment and Erosion Control Manual, or for linear transportation projects, the NCDOT Sediment and Erosion Control Manual.
16. All devices shall be maintained on all construction sites, borrow sites, and waste pile (spoil) sites, including contractor-owned or leased borrow pits associated with the project. Sufficient materials required for stabilization and/or repair of erosion control measures and stormwater routing and treatment shall be on site at all times.
17. For borrow pit sites, the erosion and sediment control measures shall be designed, installed, operated, and maintained in accordance with the most recent version of the North Carolina Surface Mining Manual. Reclamation measures and implementation shall comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act and the Mining Act of 1971.
18. Sediment and erosion control measures shall not be placed in wetlands or waters unless otherwise approved by this Certification. [15A NCAC 02H.0506(b)(3) and (c)(3)]
19. Erosion control matting in riparian areas shall not contain a nylon mesh grid which can impinge and entrap small animals. Matting should be secured in place by staples, stakes, or wherever possible live



- stakes of native trees. Riparian areas are defined as a distance 25 feet from top of stream bank. [15A NCAC 02B.0224, .0225]
20. If placement of sediment and erosion control devices in wetlands and waters is unavoidable, then design and placement of temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands, stream beds, or banks, adjacent to or upstream and downstream of the above structures. All sediment and erosion control devices shall be removed from wetlands and waters and the natural grade restored within two (2) months of the date that the Division of Energy, Mining and Land Resources (DEMLR) or locally delegated program has released the specific area within the project. [15A NCAC 02H.0506(b)(3) and (c)(3)]
 21. Pursuant to 15A NCAC 2B.0233(6), sediment and erosion control devices shall not be placed in Zone 1 of any Neuse Buffer without prior approval by the NCDWR. At this time, the NCDWR has approved no sediment and erosion control devices in Zone 1, outside of the approved project impacts, anywhere on this project. Moreover, sediment and erosion control devices shall be allowed in Zone 2 of the buffers provided that Zone 1 is not compromised and that discharge is released as diffuse flow.
 22. All stormwater runoff shall be directed as sheetflow through stream buffers at non-erosive velocities, unless otherwise approved by this certification. (15A NCAC 2B.0233)
 23. New roadside ditches that do not control for nitrogen and attenuate flow before discharging through the riparian buffer are prohibited [15A NCAC 2B.0233(6)]
 24. All fill slopes located in jurisdictional wetlands shall be placed at slopes no flatter than 3:1, unless otherwise authorized by this certification. [15A NCAC 02H.0506(b)(2)]
 25. Native riparian vegetation must be reestablished in the riparian areas within the construction limits of the project by the end of the growing season following completion of construction. [15A NCAC 02H.0506(b)(2)]
 26. All riparian buffers impacted by the placement of temporary fill or clearing activities shall be restored to the preconstruction contours and revegetated. Maintained buffers shall be permanently revegetated with non-woody species by the end of the growing season following completion of construction. For the purpose of this condition, maintained buffer areas are defined as areas within the transportation corridor that will be subject to regular NCDOT maintenance activities including mowing. The area with non-maintained buffers shall be permanently revegetated with native woody species before the next growing season following completion of construction. (15A NCAC 2B.0233)
 27. Discharging hydroseed mixtures and washing out hydroseeders and other equipment in or adjacent to surface waters is prohibited. [15A NCAC 02H.0506(b)(3)]
 28. There shall be no excavation from, or waste disposal into, jurisdictional wetlands or waters associated with this permit without appropriate modification. Should waste or borrow sites, or access roads to waste or borrow sites, be located in wetlands or streams, compensatory mitigation will be required since that is a direct impact from road construction activities.[15A NCAC 02H.0506(b)(3) and (c)(3)]
 29. All mechanized equipment operated near surface waters must be regularly inspected and maintained to prevent contamination of waters from fuels, lubricants, hydraulic fluids, or other toxic materials. [15A NCAC 02H.0506(b)(3)]
 30. 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 the NCDWR 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, the NCDWR may reevaluate and modify this certification. [15A NCAC 02B.0200]
 31. The Permittee shall report any violations of this certification to the Division of Water Resources within 24 hours of discovery. [15A NCAC 02B.0506(b)(2)]



32. The NCDOT will conduct a pre-construction meeting with all appropriate staff to ensure that the project supervisor and essential staff understand the permit conditions and any potential issues at the permitted site. NCDWR staff shall be invited to the pre-construction meeting. [15A NCAC 02H.0506(b)(2) and (b)(3)]
33. A copy of this Water Quality Certification shall be maintained 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. [15A NCAC 02H .0507(c) and 15A NCAC 02H .0506 (b)(2) and (c)(2)]

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)-431-3000, Facsimile: (919)-431-3100

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

Mr. Bill Lane, General Counsel
Department of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601

This the 5th day of March, 2020

DIVISION OF WATER RESOURCES

DocuSigned by:
Amy Chapman
9C9886312DCD474...

S. Daniel Smith
Director

WQC No. 003673



ROY COOPER
Governor
MICHAEL S. REGAN
Secretary
S. DANIEL SMITH
Director



NCDWR 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 Resources, 1617 Mail Service Center, Raleigh, NC, 27699-1617. This form may be returned to NCDWR 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 _____

