



November 6, 2006

Dr. Greg Thorpe, PhD., Manager
Planning and Environmental 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 with ADDITIONAL CONDITIONS for the US 74 Relocation in Robeson County, State Project No. 6.469002T, TIP No. R-0513, DWQ Project No. 20040734 v.3.
Maxton Site and Little Jacob Swamp Site Mitigation projects.

Dear Dr. Thorpe:

Attached hereto is a modification of Certification No. 3468 issued to The North Carolina Department of Transportation dated August 5, 2004, and modified April 19, 2005. This modification is applicable only to the additional proposed activities. All the authorized activities and conditions of certification associated with the original Water Quality Certification and subsequent modifications still apply except where superceded by this certification.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,

Alan W. Klimek, P.E.
Director

Attachments

- cc: Richard Spencer, US Army Corps of Engineers, Wilmington Field Office
- Jim Rerko, Division 6 Environmental Officer
- Kathy Matthews, Environmental Protection Agency
- Travis Wilson, NC Wildlife Resources Commission
- Gary Jordan, US Fish and Wildlife Service
- John Merritt, NCDOT PDEA
- Beth Harmon, Ecosystem Enhancement Program
- Ken Averitte, DWQ Fayetteville Regional 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. This certification modification authorizes the NCDOT to transfer mitigation credits to two restoration and preservation sites in Robeson County. The project shall be constructed pursuant to the modification dated received September 6, 2006. The authorized mitigation credits are as described below:

Stream Credits in the Lumber River Basin

Site	Linear Feet of Stream Mitigation	Type of Mitigation	Ratio of Credit Approved	Stream Mitigation Credit in Linear Feet
Maxton Site	3,260	Restoration	1:1	3,260
Jacob Swamp Site	3,337	Restoration	1:1	3,337
Total	6,597			6,597

Total Stream Mitigation Credit for Project: 6,597 linear feet.

Wetland Credits in the Lumber River Basin

Site	Acres of Wetland Mitigation	Type of Wetland	Type of Mitigation	Ratio of Credit Approved	Wetland Mitigation Credit in Acres
Maxton Site, Wetland 1	48.6	Riverine Clearcut	Preservation	20:1	2.43
Maxton Site, Wetland 2	1.4	Non-Riverine	Preservation	5:1	0.28
Jacob Swamp, Wetland 1	0.75	Non-Riverine	Preservation	5:1	0.15
Jacob Swamp, Wetland 2	0.19	Non-Riverine	Preservation	5:1	0.038
Total	50.94				2.9

Total Wetland Mitigation Credit for Project: 2.9 acres.

The application provides adequate assurance that the discharge of fill material into the waters of the Lumber 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 application dated received September 6, 2006, except where addressed by this certification. All the authorized activities and conditions of certification associated with the original Water Quality Certification dated August 5, 2004, and modified April 19, 2005 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.



Conditions of Certification:

1. All other conditions written into previous Water Quality Certifications for this project still apply.
2. For the remaining impacts of 2,412 linear feet of stream, you are required to do 2,412 linear feet of stream mitigation. We understand that you have chosen to perform this remaining balance of compensatory mitigation 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 8, 2005 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.
3. For the remaining impacts of 55.0 acres of wetlands, you are required to do 110.0 acres of wetland mitigation. We understand that you have chosen to perform this remaining balance of compensatory mitigation 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 8, 2005 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.
4. This certification authorizes the use of Wetland Site 1 at the Maxton Site project. Due to the fact that the land has been clear-cut, a preservation rate of 20:1 is approved. DOT is advised that it may apply for a modification for more credit as an enhancement project. Such modification will require an enhancement plan including appropriate replanting of the site.
5. The following conditions are requirements at the Maxton Site Mitigation project:
 - a. Prior to construction, DOT is required to submit and get approval of a written conservation easement to DWQ.
 - b. A monitoring report will be required annually for the first five years. For the stream restoration, the success criteria for the riparian buffers will be a minimum of 260 trees per acre after five years.
 - c. Prior to construction, DOT is required to submit a design change for the stream restoration to ensure that no ratios of radius curvature to bankful width are less than 2.5, and have that design change approved by DWQ.
6. The following conditions are requirements at the Little Jacob Swamp Site Mitigation project:
 - a. At the stream restoration site, the mitigation plan describes a road crossing culvert being replaced with a different sized pipe. DOT shall install a cross vane downstream of the pipe replacement in order to prevent scouring the streambed. The design shall be submitted and approved by DWQ prior to any construction activities.
 - b. Prior to construction, DOT is required to submit and get approval of a written conservation easement to DWQ.
 - c. A monitoring report will be required annually for the first five years. For the stream restoration, the success criteria for the riparian buffers will be a minimum of 260 trees per acre after five years.
 - d. Prior to construction, DOT is required to submit a design change for the stream restoration to ensure that no ratios of radius curvature to bankful width are less than 2.5, and have that design change approved by DWQ.
7. 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 be located in wetlands or streams, compensatory mitigation will be required since that is a direct impact from road construction activities.
8. All channel relocations will be constructed in a dry work area and stabilized before stream flows are diverted. Channel relocations will be completed and stabilized, and must be approved on site by DWQ staff, prior to diverting water into the new channel. Whenever possible, channel relocations shall be allowed to stabilize for an entire growing season. Vegetation used for bank stabilization shall be limited to native woody species, and should include establishment of a 30 foot wide wooded and an adjacent 20 foot wide vegetated buffer on both sides of the relocated



channel to the maximum extent practical. A transitional phase incorporating coir fiber and seedling establishment is allowable.

9. 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.
10. 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 DWQ 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, DWQ may reevaluate and modify this certification.
11. Upon completion of the project, the NCDOT Division Engineer shall complete and return the "Certification of Completion Form" to notify DWQ when all work included in the 401 Certification has been completed.
12. All mechanized equipment operated near surface waters must be regularly inspected and maintained to prevent contamination of stream waters from fuels, lubricants, hydraulic fluids, or other toxic materials.
13. 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.

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 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 6th day of November 2006

DIVISION OF WATER QUALITY

Alan W. Klimek, P.E.
Director

WQC No.3468