

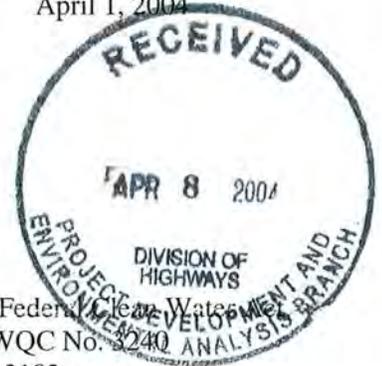


Manley
Michael F. Easley, Governor
William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources

Alan W. Klimek, P.E., Director
Division of Water Quality
Coleen H. Sullins, Deputy Director
Division of Water Quality

April 1, 2004

Mr. Gregory J. Thorpe, Ph.D., Environmental Director
NCDOT Planning and Environmental Branch
1548 Mail Service Center
Raleigh, NC, 27699-1548



Dear Dr. Thorpe:

Re: MODIFICATION to Water Quality Certification Pursuant to §401 of the Federal Clean Water Act, East Charlotte Outer Loop (TIP Project R-2123), DWQ Project 990247, WQC No. 3240 City Boulevard (TIP Project R-2420B), DWQ Project 970863, WQC No. 3182 Mecklenburg County.

Attached hereto is a copy of the Modification to Certification Nos. 3182 and 3240 issued to The North Carolina Department of Transportation issued on April 1, 2004.

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

Sincerely,

Alan W. Klimek, P.E.

Attachments

- cc: Wilmington District Corps of Engineers
- Steve Lund, USACE Asheville Field Office
- NCDWQ Mooresville Regional Office
- Joe Mickey, NCWRC Stream Mitigation Coordinator
- David Cox, NCWRC
- Michael Wood, Catena Group
- Christopher Militscher, US Environmental Protection Agency – Region IV
- William Gilmore, NC Ecological Enhancement Program
- Central Files
- File Copy



NORTH CAROLINA 401 WATER QUALITY CERTIFICATION

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 (DWQ) Regulations in 15 NCAC 2H, .0500. Water Quality Certification No. 3182 and Water Quality Certification No. 3240 authorized the NCDOT to incur the following permanent impacts:

R-2123 East Charlotte Outer Loop

- 0.80 acres of wetlands
- 3,250 linear feet of jurisdictional stream loss;

R-2420B City Boulevard

- 0.45 acres of wetlands.

The original applications for these transportation projects provided adequate assurance that the discharge of fill material into the waters of the state 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.

Both projects were constructed in accordance with the conditions set forth in the Water Quality Certifications. The purpose of the January 29, 2004 request for Modification to WQC No. 3182 Condition 5 and WQC No. 3240 Condition 7 is to extend the schedule for implementation of the stream mitigation. These conditions state that the North Carolina Department of Transportation (NCDOT) would be responsible for restoring 3194 linear feet of stream in association with R-2123 and 903 linear feet of stream in association with R-2420B, for a total of 3997 linear feet of stream. Furthermore, the stream mitigation was required to be performed in the Goose Creek subbasin in accordance with the Memorandum of Agreements between the North Carolina Wildlife Resources Commission (WRC) and the NCDOT. The mitigation was due by May 2, 2000. To date, the mitigation has not been performed.

A list of potential mitigation sites within the Goose Creek subbasin is as follows:

- Green Mitigation Site: 750 feet of Enhancement Level II.
- B.B. Haigler Site: 1,174 feet of UT to Goose Creek.
- Earl Haigler Site: 250 feet of streambank stabilization.
- Earl Haigler/Price Site: 1,186 feet of Enhancement; 506 feet of Priority I restoration.
- Williams/Matlock Site: up to 1000 linear feet of Priority I restoration.
- Lemmond Site: approx. 466 linear feet of Priority I restoration.

These six sites total approximately 5,332 linear feet of potential stream restoration or enhancement. Of this total, WRC anticipates that 1,972 feet will be priority I restoration (1:1 mitigation ratio). The remaining 3,360 linear feet of potential stream enhancement will be assigned mitigation ratios of 2:1 or 3:1. Therefore, based on mitigation ratios assigned by DWQ, these sites total 3,652 feet or 3,092 feet of mitigation credit. The amount of mitigation credit that NCDOT needs to fulfill the two Water Quality Certification conditions is 4,097 linear feet. Additional compensatory mitigation will be required.

This approval is only valid for the purpose that you submitted in your January 29, 2004 Modification request and subsequent correspondence on the Goose Creek Mitigation Program from Wildlife Resources

Mr. Gregory J. Thorpe, Ph.D.
Modification to WQC Nos. 3182 and 3240
Goose Creek Mitigation Plan
April 1, 2004

Commission dated February 5, 2004 and March 16, 2004. For this approval to remain valid, you are required to comply with all the conditions listed below.

This Modification shall expire one (1) year from the date of the cover letter from DWQ or on the same day as the expiration date of the corresponding US Army Corps of Engineers Permit, whichever is later.

Condition(s):

1. By January 31, 2004, WRC shall have obtained landowner concurrence that they have an interest in participating in the project and are willing to allow access to create a preliminary design.
2. By April 30, 2004, landowners will approve preliminary plans. Easement boundary surveys will begin at this point and NCDOT will move forward with acquisition.
3. By June 30, 2004, WRC shall have obtained additional landowner agreements to meet the compensatory mitigation requirement of 4,097 linear feet. If this condition cannot be met, NCDOT shall present DWQ with other mitigation options by July 31, 2004.
4. By July 31, 2004, detailed plans shall be completed and sent to resource agency personnel for review.
5. By October 31, 2004 construction on the above-listed mitigation sites shall begin.
6. WRC and/or its authorized agent shall provide DWQ with monthly status reports detailing the progress with the above-listed tasks.
7. NCDOT and its authorized agents shall conduct its activities in a manner consistent with State water quality standards and any other appropriate requirements of State law and Federal law. If DWQ determines that such standards or laws are not being met (including the failure to meet compensatory mitigation requirements) 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 to include conditions appropriate to assure compliance with such standards and requirements in accordance with 15A NCAC 2H.0507(d). Before modifying the Certification, DWQ shall notify NCDOT and the US Army Corps of Engineers, provide public notice in accordance with 15A NCAC 2H.0503 and provide opportunity for public hearing in accordance with 15A NCAC 2H.0504. Any new or revised conditions shall be provided to NCDOT in writing, shall be provided to the United States Army Corps of Engineers for reference in any permit issued pursuant to Section 404 of the Clean Water Act, and shall also become conditions of the 404 Permit for the project.

NCDOT shall require its contractors (and/or agents) to comply with all of the terms and conditions of this Certification in the construction and maintenance of this project, and shall provide each of its contractors (and/or agents) a copy of this Certification.

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 Permit. This Certification shall expire upon the expiration of the 404 Permit.

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If you do not accept any of the conditions of this Certification, you may ask for an adjudicatory hearing. You must act within 60 days of the date that you receive this letter. To ask for a hearing, send a written petition that conforms to Chapter 150B of the North Carolina General Statutes to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. This certification and its conditions are final and binding unless you ask for a hearing.

This the 1st day of April 2004

DIVISION OF WATER QUALITY

Alan W. Klimek, P.E.

WQC No. 3182 and 3240