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STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY
GOVERNOR

LYNDO TIPPETT
SECRETARY

October 29, 2001

MEMORANDUM TO: Mr. Ron Watson, P.E.
Division 14 Engineer

FROM: V. Charles Bruton, Ph.D., Manager
Office of the Natural Environment
Project Development and
Environmental Analysis Branch

SUBJECT: Haywood County, US 23 B (Old Asheville Highway) from Waynesville City Limits (Marshall Street/Woodland Drive) to SR 1801 (Jerry Liner Road); State Work Order Number 8.1942901; TIP Number R-2210A

Attached are the U. S. Army Corps of Engineers Nationwide Permit Number 14 (Linear Transportation Crossing) tear sheet, the NCWRC letter of concurrence and the Division of Water Quality 401 Certifications for the above referenced project. All environmental permits have been received for the construction of this project.

VCB/eah

Attachment

cc: Ms. Debbie Barbour, P.E.
Mr. David Rhodes, P.E.
Mr. John Alford, P.E.
Mr. David Chang, P.E.
Mr. Randy Garris, P.E.
Mr. Tim Rountree, P.E.
Mr. Don Lee, P.E.
Mr. N. L. Graf, FHWA
Mr. Mark Davis, Division 14 DEO

MAILING ADDRESS:
NC DEPARTMENT OF TRANSPORTATION
PROJECT DEVELOPMENT AND ENVIRONMENTAL ANALYSIS
1548 MAIL SERVICE CENTER
RALEIGH NC 27699-1548

TELEPHONE: 919-733-3141
FAX: 919-733-9794

WEBSITE: WWW.DOH.DOT.STATE.NC.US

LOCATION:
TRANSPORTATION BUILDING
1 SOUTH WILMINGTON STREET
RALEIGH NC

SPECIAL PROJECT COMMITMENTS

US 23 Business (Old Asheville Highway)
From Marshall Street/Woodland Drive/Waynesville City Limits
to SR 1801 (Jerry Liner Road)
near Waynesville, Haywood County
Federal Aid Project No. STP-23B(1)
State Project No. 8.1942901
TIP No. R-2210 A

In addition to the standard Nationwide Permit #14 Conditions, the general Nationwide Permit Conditions, Section 404 Only Conditions, Regional Conditions, State Consistency Conditions, General Certification Conditions, and Section 401 Conditions of Certification, the following special commitments have been agreed to by the NCDOT:

Commitments Developed Through Project Development and Design

Project Development and Environmental Analysis, Hydraulics Unit

A Nationwide Permit No. 14 (minor road crossings) from the Corps of Engineers is applicable to this project. The project also requires a 401 Water Quality Certification from the N.C. Division of Environmental Management.

Division 14 Construction Office, Location and Surveys Unit

This project will impact five (5) geodetic survey markers. NCDOT will notify the N.C. Geodetic Survey prior to construction.

Structures

Tennessee Valley Authority approval has been applied for but has not been received. Construction of the project will be in compliance with the TVA's "Stream Modification Policy." NCDOT will continue to coordinate with TVA concerning the permit.

Roadside Environmental Unit, Division 14 Construction Office

To minimize impacts to water resources in the study area, NCDOT's Best Management Practices for the Protection of Surface Waters and Sedimentation Control guidelines will be strictly enforced during the construction stage of the project.

Commitments Developed Through Permitting

Roadside Environmental Unit, Division 14 Construction Office

Instream work and land disturbance within the 25-foot wide buffer zone are prohibited from January 1 through April 15 at culvert construction sites, 2, 3 and 4, on Raccoon Creek to protect the egg and fry stages of trout from off-site sedimentation during construction.

Division 14 Construction Office

The onsite stream relocation and restoration that is serving as mitigation for the highway project will take place in Raccoon Creek. The new stream design should be constructed outside the moratorium period.

SPECIAL PROJECT COMMITMENTS

US 23 Business (Old Asheville Highway)
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to SR 1801 (Jerry Liner Road)
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Federal Aid Project No. STP-23B(1)
State Project No. 8.1942901
TIP No. R-2210 A

Roadside Environmental Unit, Division 14 Construction Office
Stringent erosion control measures should be installed where soil is disturbed and maintained until project completion. Because this project is going to be constructed in winter months when it is difficult to get vegetation to grow we suggest the use of erosion control matting around all stream crossings and adjacent to streams.

Roadside Environmental Unit, Division 14 Construction Office
Sedimentation and Erosion Control Guidelines for Sensitive Watersheds (15A NCAC 4B .0124) must be implemented prior to any ground-disturbing activities to minimize impacts to downstream aquatic resources. Temporary or permanent herbaceous vegetation should be 0planted on all bare soils with 15 days of ground disturbing activities to provide long term erosion control.

Division 14 Construction Office
All instream work shall be preformed during low flow conditions.

Division 14 Construction Office, Division 14 Maintenance Office
Storm water shall be directed to buffer areas or retention basis and should not be routed directly into streams. Existing vegetated buffers shall not be mowed in order to utilize it for storm water sheet flow.

Division 14 Construction Office
No live concrete shall come in contact with surface waters until it has hardened.

Division 14 Construction Office
All mechanized equipment used near or in surface waters shall be regularly inspected and maintained to prevent contamination of waters from fuel lubricants, hydraulic fuels, or other toxic materials.

Division 14 Construction Office
The presence of mechanical equipment in stream channels shall be minimized.

Division 14 Construction Office, Hydraulics Unit
All culverts required for this project shall be installed in such a manner that the original stream profiles are not altered (i.e. depth of the channel shall not be reduced by a widening of the streambed). Existing stream dimensions are to be maintained above and below locations of culvert extensions. Culverts shall be installed one foot below the stream to allow for movement of fish and other aquatic life.

Division 14 Construction Office
Use of riprap for bank stabilization is to be minimized; rather, native vegetation consisting of Orchard grass, switch grass and Landino clover in the riparian area is to be planted. Plantings by live staking shall include willow, red-osier dogwood, silky dogwood, buttonbush, hazel alder, and rough-leaved dogwood as specified in the final design plans. If necessary, riprap must be

limited to the stream ban below the high water mark, and vegetation must be used for stabilization above high water.

Division 14 Construction Office
Rock silt screens at culvert outlets shall be removed at project completion.

Division 14 Construction Office
Any impacts to waters or wetlands associated with waste or borrow pits from this project may require additional mitigation.

PD & EA Branch, Division 14 Construction Office
The 1466 linear feet of stream impacts will be mitigated for at a ratio of 1:1.3 by providing 1902.40 linear feet of on-site stream relocation/restoration using natural channel design. The stream relocation shall be built and maintained according to the approved plans before any mitigation credit is given. If the DWQ determines that the stream restoration or associated riparian area has become unstable, the stream shall be repaired or stabilized using only natural channel design techniques if possible.

PD & EA Branch, Division 14 Construction Office
The vegetation in the riparian shall be maintained and /or replaced according to the approved plans. Riprap and other hard structures may only be used if required by the Division of Land Resources or a Delegated Local Program. Additionally, all repair designs must be submitted to and receive written approval from the DWQ before the repair work is preformed.

Division 14 Construction Office, Division 14 Right-of-Way Office
Because the restored stream is proposed as compensatory mitigation for stream impacts, the restored portion and associated riparian area shall be preserved in perpetuity through a preservation easement of some other legally binding mechanism or agreement. This easement or other legally binding mechanism or agreement must be in place before and mitigation credit shall be given.

Roadside Environmental Unit, PD & EA Branch
Additionally, the stream physical and biological monitoring plan shall be followed and reports shall be submitted to the DWQ after the first year and every other year afterwards for a total of five (5) years.

WAG

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

Action Id. **200130653** County: Haywood

GENERAL PERMIT (REGIONAL AND NATIONWIDE) VERIFICATION

Property owner: North Carolina Department of Transportation

Address: Project Development and Environmental Analysis Branch, Attn: William D. Gilmore, Manager, 1548 Mail Service Center, Raleigh, North Carolina 27699-1548

Telephone No.: (919) 733-7844

Size and Location of project (water body, road name/number, town, etc.):

US Highway 23B from Waynesville City Limits to SR 1801 crossing Raccoon Creek and unnamed tributaries east of Waynesville, TIP No. R 2210A

Description of Activity:

Widen 2.2 miles of highway impacting 1342 linear feet (.16 acres) of Raccoon Creek and an unnamed tributary at 4 locations. Relocate 1342 linear feet of stream channel utilizing natural channel design. SPECIAL CONDITIONS: 1) All conditions of the attached North Carolina Wildlife Resources Commission memorandum of July 6, 2001 are hereby incorporated as special conditions of this permit. 2) All relocated channels must be stabilized with vegetation or sod prior to diverting streamflow through them.

Applicable Law: X Section 404 (Clean Water Act, 33 U.S.C.1344).
(check all that apply) ____ Section 10 (River and Harbor Act of 1899).
Authorization: ____ Regional General Permit Number.
14 Nationwide Permit Numbers.

Your work is authorized by this Regional General (RGP) or Nationwide Permit (NWP) provided it is accomplished in strict accordance with the attached conditions and your submitted plans. If your activity is subject to Section 404 (if Section 404 block above is checked), before beginning work you must also receive a Section 401 water quality certification from the N.C. Division of Environmental Management, telephone (919) 733-1786.

Please read and carefully comply with the attached conditions of the RGP or NWP. Any violation of the conditions of the RGP or the NWP referenced above may subject the permittee to a stop work order, a restoration order, and/or appropriate legal action.

This Department of the Army RGP or NWP verification does not relieve the permittee of the responsibility to obtain any other required Federal, State, or local approvals/permits. The permittee may need to contact appropriate State and local agencies before beginning work.

If there are any questions regarding this authorization or any of the conditions of the General Permit or Nationwide Permit, please contact the Corps Regulatory Official specified below.

Date **July 17, 2001**
Corps Regulatory Official Steven Lund Telephone No. **(828) 271-4857**
Expiration Date of Verification **July 17, 2003**

SURVEY PLATS, FIELD SKETCH, WETLAND DELINEATION FORMS, PROJECT PLANS, ETC., MUST BE ATTACHED TO THE YELLOW (FILE) COPY OF THIS FORM, IF REQUIRED OR AVAILABLE.

TO: Mr. Steve Lund, USACOE
Asheville Field Office

FROM: Maryellen Haggard, Regional Coordinator
Habitat Conservation Program

DATE: July 6, 2001

SUBJECT: Trout moratorium period for road improvements to US 23 Business from Waynesville City limits (Marshall Street/Woodland Drive) to SR 1801 (Jerry Liner Road), Haywood County. TIP No. R-2210 A, State Project No. 81942901, Federal Aid Project STP-23B (1).

The North Carolina Department of Transportation (NCDOT) is requesting to shorten the moratorium period for the US 23 Business road improvement project. Biologists on staff with the NCWRC have reviewed the proposed request. Both Brown and Rainbow Trout were found in Raccoon Creek during a sample taken in December 2000. The sizes of the fish collected indicate that natural reproduction is occurring in the creek. We will allow NCDOT to work under a shortened moratorium provided they adhere to the following conditions.

1. Instream work and land disturbance within the 25-foot wide buffer zone are prohibited from January 1 through April 15 at culvert construction sites, 2, 3 and 4, on Raccoon Creek to protect the egg and fry stages of trout from off-site sedimentation during construction.

2. The onsite stream relocation and restoration that is serving as mitigation for the highway project will take place in Raccoon Creek. The new stream design should be constructed outside the moratorium period.

3. Stringent erosion control measures should be installed where soil is disturbed and maintained until project completion. Because this project is going to be constructed in winter months when it is difficult to get vegetation to grow we suggest the use of erosion control matting around all stream crossings and adjacent to streams.

cc: Cynthia Van Der Wiele, NCDWQ
Alice N. Gordon, NCDOT

DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
151 PATTON AVENUE
ROOM 208
ASHEVILLE, NORTH CAROLINA 28801-5006

REPLY TO
ATTENTION OF:

Permit Number: 200130653

Permit Type: NW 14

Name of County: Haywood

Name of Permittee: NC Dept of Transportation - TIP R-2210A

Date of Issuance: 17 July 2001

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:

U.S. Army Corps of Engineers
Attention: CESAW-RG-A
151 Patton Avenue, Room 208
Asheville, North Carolina 28801-5006

Please note that your permitted activity is subject to a compliance inspection by an 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 conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

_____ _____

Signature of Permittee Date

REGIONAL CONDITIONS

I. The following waters within the State of North Carolina will be excluded from use of Nationwide Permits #3, 7, 12, 14, 27, 39, 40, 41, 42, 43, and 44:

Discharges into Waters of the United States designated by the North Carolina Division of Marine Fisheries as anadromous fish spawning area are prohibited during the period between March 1 and May 30.

II. The following waters within the State of North Carolina will be subject to additional notification requirements for activities authorized by Nationwide Permits #3, 12, 14, 27, 39, 40, 41, 42, and 43:

·Before the nationwide permits listed above can be utilized in a designated "Outstanding Resource Water" (ORW) (as defined by the North Carolina Division of Water Quality) or a "Primary Nursery Area" (PNA) (as defined by the North Carolina Division of Marine Fisheries) within the State of North Carolina, the prospective permittee must notify the District Engineer with a preconstruction notification pursuant to the procedures identified in Nationwide Permit General Condition #13.

III. The following waters within the State of North Carolina will be subject to additional notification requirements for activities authorized by Nationwide Permits #3, 7, 12, 14, 27, 39, 40, 41, 42, 43, and 44:

A. Before the nationwide permits listed above can be utilized in a designated "Area of Environmental Concern" (AEC) in the twenty (20) counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA), a proponent must first obtain the required CAMA permit and furnish a copy of the CAMA permit to the appropriate Wilmington District Regulatory Field Office (Wilmington Field Office – P.O. Box 1890, Wilmington, NC 28402 or Washington Field Office – P.O. Box 1000, Washington, NC 27889).

B. Before the nationwide permits listed above can be utilized on a barrier island of North Carolina, proponents must notify the Wilmington District Engineer in accordance with General Condition 13 and furnish a written statement of compliance with all of the conditions of the applicable nationwide permit.

C. Before the nationwide permits listed above can be utilized in a "Mountain or Piedmont Bog" of North Carolina, proponents must notify the Wilmington District Engineer in accordance with General Condition 13 and furnish a written statement of compliance with all of the conditions of the applicable nationwide permit.

Note: The following wetland community types as identified by the N.C. Natural Heritage Program document entitled, "Classification of Natural communities of North Carolina (Michael P. Schafale and Alan S. Weakley, 1990), are subject to this regional condition.

Mountain Bogs	Piedmont Bogs
Swamp Forest-Bog Complex	Upland depression Swamp Forest
Swamp Forest-Bog Complex (Spruce Subtype	
Southern Appalachian Bog (Northern Subtype)	
Southern Appalachian Bog (Southern Subtype)	
Southern Appalachian Fen	

D. Before the nationwide permits listed above can be utilized within twenty-five (25) designated counties of North Carolina that contain trout waters, proponents must notify the Wilmington District Engineer in accordance with General Condition 13 and furnish a written statement of compliance with all of the conditions of the applicable nationwide permit. Notification will include a letter of comments and recommendations from North Carolina Wildlife Resources Commission (NCWRC), the location of work, a delineation of wetlands, a discussion of alternatives to working in the mountain trout waters and why alternatives were not selected, and a plan to provide compensatory mitigation for all unavoidable adverse impacts to the mountain trout waters. To facilitate coordination with the NCWRC, the proponent may provide a copy of the notification to the NCWRC concurrent with the notification to the District Engineer. The NCWRC will respond both to the proponent and directly to the Corps of Engineers.

The twenty-five (25) designated counties are:

Alleghany	Ashe	Avery
Buncombe	Burke	Caldwell
Cherokee	Clay	Graham
Haywood	Henderson	Jackson
Macon	Madison	McDowell
Mitchell	Polk	Rutherford
Stokes	Surry	Swain
Transylvania	Watauga	Wilkes
Yancey		

To obtain the required letter from the North Carolina Wildlife Resources Commission, a proponent should contact:

North Carolina Wildlife Resources Commission
Habitat Conservation Program Manager
1721 Mail Service Center
Raleigh, NC 27699-1721
Telephone (919) 733-7638

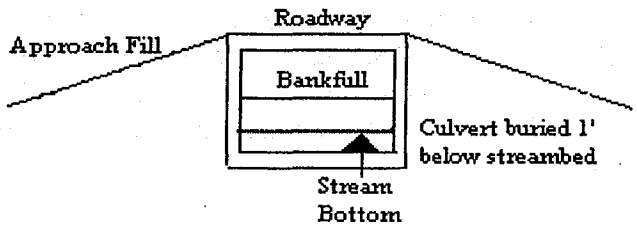
IV. Regional conditions for specific Nationwide Permits within the State of North Carolina are as follows:

NWP #3 - Maintenance.

a. Measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the United States until the concrete has hardened.

b. Where riprap material is utilized to stabilize banks and to comply with Nationwide Permit General Condition #3, Soil Erosion and Sediment Controls, the permittee is required to utilize filter cloth prior to the placement of the riprap material.

c. Culvert construction will include measures to promote fish and other aquatic organism passage. Culvert inverts will be buried a minimum of one foot below the bed of the stream for culverts greater than 48 inches in diameter. For culverts 48 inches in diameter or smaller, they must be buried below the bed of the stream to a depth equal to or greater than 20 percent of diameter of the culvert. Bottomless arch culverts would satisfy this condition. All culverts in the 20 coastal counties must be buried to a depth of one foot below the bed of the stream to be consistent with the CAMA general permit requirements. The dimension, pattern, and profile of the stream above and below a pipe or culvert should not be modified by widening the stream channel and reducing the depth of the stream.



NWP # 7 - Outfall Structures and Maintenance.

a. Measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the United States until the concrete has hardened.

b. Where riprap material is utilized to stabilize banks and to comply with Nationwide Permit General Condition #3, Soil Erosion and Sediment Controls, the permittee is required to utilize filter cloth prior to the placement of the riprap material.

c. The associated intake structure must employ the best practicable means, including siting, design, and technology (e.g., screening) to minimize entrainment or impingement of fish and other aquatic life.

NWP #12 - Utility Activities.

a. Measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the United States until the concrete has hardened.

b. Where riprap material is utilized to stabilize banks and to comply with Nationwide Permit General Condition #3, Soil Erosion and Sediment Controls, the permittee is required to utilize filter cloth prior to the placement of the riprap material.

c. Pipeline/utility line construction through jurisdictional waters and wetlands will be accomplished utilizing directional drilling/boring methods to the maximum extent practicable.

d. Temporary discharge of excavated or fill material into waters of the United States including wetlands will be for the absolute minimum period of time necessary to accomplish the work. Temporary discharges will be fully contained with appropriate erosion control/containment methods or otherwise such fills will consist of non-erodible materials.

e. The areas of waters of the United States that are disturbed will be limited to the minimum necessary to install the utility line. The work area authorized by this permit, including temporary access roadways and permanent fills will be minimized to the greatest extent practicable. Justification for work corridors exceeding forty (40) feet in width is required and will be based on pipeline diameter and length, size of equipment required to construct the utility line, and other construction information deemed necessary to support the request. The applicant is required to provide this information to the District Engineer with the initial notification package.

f. Temporary access roadways will not span more than one-half the distance across any waters of the United States including wetlands at any one time.

g. In areas where a subaqueous utility line is to cross a Federally maintained channel, i.e., the Atlantic Intracoastal Waterway (AIWW), it will be buried at a minimum depth of six (6) feet below the depth of the authorized channel. In other areas where subaqueous lines are subject to interfere with navigation, they will be installed at a minimum depth of two (2) feet below the substrate.

h. The minimum clearance for aerial communication lines, or any lines not transmitting electrical power, will be ten (10) feet above the clearance required for stationary bridges in the vicinity as established by the U.S. Coast Guard. In the event the U.S. Coast Guard has not established a bridge clearance, minimum vertical clearances for power and aerial lines will not be less than required by Section 23, Rule 232, of the latest revision of the National Electrical Safety Code (ANSI C2). Clearances will not be less than shown in Table 232-1, Item 7, ANSI C2.

i. The clearance for an aerial line is based on the low point of the line under conditions that produce the greatest sag, taking into consideration temperature, load, wind, length or span and the type of supports. The minimum clearance for an aerial electrical power transmission line will be governed by the system voltage as indicated below:

Nominal System Voltage, kilovolt	Minimum Clearance Above Bridge Clearance (As Established by the U.S. Coast Guard)
115 and below	20 feet
138	22
161	24
230	26
350	30
500	35
700	42
750 to 765	45

j. A plan to restore and revegetate wetland areas cleared for construction must be submitted with the required preconstruction notification. Cleared wetland areas will be revegetated to the maximum extent practicable with native species of canopy, shrub, and herbaceous species. Fescue grass will not be utilized.

k. A compensatory mitigation plan for activities under this nationwide permit will be submitted with all required preconstruction notifications.

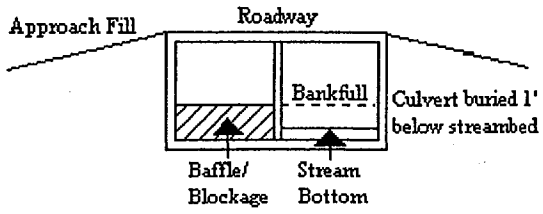
NWP #14 - Linear Transportation Crossings.

a. Measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the United States until the concrete has hardened.

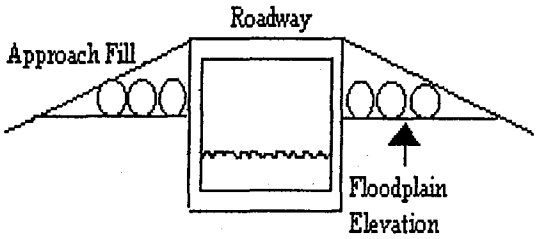
b. Where rip rap material is utilized to stabilize banks and to comply with Nationwide Permit General Condition #3, Soil Erosion and Sediment Controls, the permittee is required to utilize filter cloth prior to the placement of the rip rap material.

c. Natural channel design is to be utilized to the maximum extent practicable for stream relocations. Guidelines published by the N.C. Wildlife Resources Commission and the N.C. Division of Water Quality are available to assist in planning and design.

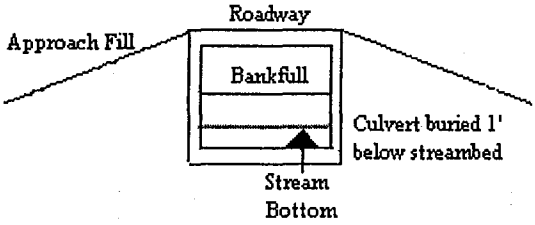
d. Bankfull flows (or less) will be accommodated through maintaining the existing bankfull channel cross sectional area. Additional culverts at such crossings will be allowed **only** to receive flows exceeding bankfull.



e. Where adjacent floodplain is available, flows exceeding bankfull will be accommodated by installing culverts at the floodplain elevation.



f. Culvert construction will include measures to promote fish and other aquatic organism passage. Culvert inverts will be buried a minimum of one foot below the bed of the stream for culverts greater than 48 inches in diameter. For culverts 48 inches in diameter or smaller, they must be buried below the bed of the stream to a depth equal to or greater than 20 percent of diameter of the culvert. Bottomless arch culverts would satisfy this condition. **All** culverts in the 20 coastal counties must be buried to a depth of one foot below the bed of the stream to be consistent with CAMA requirements. The dimension, pattern, and profile of the stream above and below a pipe or culvert should not be modified by widening the stream channel and reducing the depth of the stream.



g. Private projects authorized by this NWP are excluded from tidal waters and tidal wetlands.

NWP # 27 - Stream and Wetland Restoration Activities.

a. Measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the United States until the concrete has hardened.

b. Where riprap material is utilized to stabilize banks` and to comply with Nationwide Permit General Condition #3, Soil Erosion and Sediment Controls, the permittee is required to utilize filter cloth prior to the placement of the riprap material.

NWP # 39 - Residential, Commercial, and Institutional Developments.

a. Measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the United States until the concrete has hardened.

b. Where riprap material is utilized to stabilize banks, and to comply with Nationwide Permit General Condition #3, Soil Erosion and Sediment Controls, the permittee is required to utilize filter cloth prior to the placement of the riprap material.

c. Discharges in wetlands and in perennial streams for stormwater management facilities are not allowed under this NWP.

d. Single-family recreational facilities are not authorized by this NWP. Recreational facilities can be authorized if incorporated into and serving the entire residential, commercial, or institutional development.

NWP # 40 - Agricultural Activities.

a. Measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the United States until the concrete has hardened.

b. Where riprap material is utilized to stabilize banks, and to comply with Nationwide Permit General Condition #3, Soil Erosion and Sediment Controls, the permittee is required to utilize filter cloth prior to the placement of the riprap material for activities identified in paragraph (b), (c) and (d) of the NWP.

c. The discharge associated with activities identified in paragraphs (b), (c) and (d) of the NWP must not cause the loss of greater than 300 linear feet of streambed.

d. This nationwide permit does not apply to channelized streams (re activities identified in paragraphs (b), (c) and (d) of the NWP).

NWP # 41 - Reshaping Existing Drainage Ditches.

a. Measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the United States until the concrete has hardened.

b. Where riprap material is utilized to stabilize banks and to comply with Nationwide Permit General Condition #3, Soil Erosion and Sediment Controls, the permittee is required to utilize filter cloth prior to the placement of the riprap material.

c. This NWP applies only to activities ordered by the State of North Carolina or a local government in response to noncompliance with the State's erosion and sedimentation control requirements, or ordered by the United States Environmental Protection Agency or Corps of Engineers in response to noncompliance with any provision of the Clean Water Act.

d. Proponents must take all appropriate measures to avoid modifying the reach and circulation of waters within wetlands adjacent to the reshaped ditch.

e. This nationwide permit does not apply to channelized streams.

NWP # 42 - Recreational Facilities.

a. Measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the United States until the concrete has hardened.

b. Where riprap material is utilized to stabilize banks and to comply with Nationwide Permit General Condition #3, Soil Erosion and Sediment Controls, the permittee is required to utilize filter cloth prior to the placement of the riprap material.

NWP # 43 - Stormwater Management Facilities.

a. Measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the United States until the concrete has hardened.

b. Where riprap material is utilized to stabilize banks, and to comply with Nationwide Permit General Condition #3, Soil Erosion and Sediment Controls, the permittee is required to utilize filter cloth prior to the placement of the riprap material.

c. Discharges into wetlands and in perennial streams are not allowed under this NWP.

NWP # 44 - Mining Activities.

a. Measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the United States until the concrete has hardened.

b. Where riprap material is utilized to stabilize banks, and to comply with Nationwide Permit General Condition #3, Soil Erosion and Sediment Controls, the permittee is required to utilize filter cloth prior to the placement of the riprap material.

c. The PCN must include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes.

NATIONWIDE PERMIT 14
DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
FINAL NOTICE OF ISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS
FEDERAL REGISTER
MARCH 9, 2000

Linear Transportation Crossings. Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, and airport runways and taxiways) in waters of the United States, including wetlands, provided the activity meets the following criteria:

a. This NWP is subject to the following acreage and linear limits:

(1) For public linear transportation projects in non-tidal waters, excluding non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than \1/2\ acre of waters of the United States;

(2) For public linear transportation projects in tidal waters or non-tidal wetlands adjacent to tidal waters, provided the discharge does not cause the loss of greater than \1/3\ acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet, or;

(3) For private linear transportation projects in all waters of the United States, provided the discharge does not cause the loss of greater than \1/3\ acre of waters of the United States and the length of fill for the crossing in waters of the United States does not exceed 200 linear feet;

b. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:

(1) The discharge causes the loss of greater than \1/10\ acre of waters of the United States; or

(2) There is a discharge in a special aquatic site, including wetlands;

c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the United States to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable;

d. For discharges in special aquatic sites, including wetlands, the notification must include a delineation of the affected special aquatic sites;

e. The width of the fill is limited to the minimum necessary for the crossing;

f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing a water of the United States. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an individual permit. (Sections 10 and 404)

Note: Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

NATIONWIDE PERMIT #14: LINEAR TRANSPORTATION CROSSINGS.
Section 10 and 404

PERMIT CONDITIONS

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.

2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

4. Aquatic Life Movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species, which normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions which may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the State or tribe in its Section 401 water quality certification and Coastal Zone Management Act consistency determination.

7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a "study river" for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely effect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service.)

8. Tribal rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. Water Quality Certification. The permittee must comply with all conditions of General Water Quality Certification No. 3289, issued by the North Carolina Division of Water Quality (NCDWQ) on June 1, 2000.

10. Coastal Zone Management. The North Carolina Division of Coastal Management (NCDCM), has waived consistency.

11. Endangered Species.

a. No activity is authorized under any NWP, which is likely to jeopardize the continued existence of a threatened or endangered species, or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which is likely to destroy or adversely modify the critical habitat of such species. Non-Federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS, the District Engineer may add species-specific regional endangered species conditions to the NWP's.

b. Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal "takes" of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at http://www.fws.gov/r9endspp/endspp.html and http://nfms.gov/prot_res/esahome.html, respectively.

12. Historic Properties. No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the

State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification:

a. Timing. Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a PreConstruction Notification (PCN) as early as possible. The District Engineer must determine if the PCN is complete within 30 days of the date of receipt and can request the additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

(1) Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

(2) If notified by the District or Division Engineer that an individual permit is required; or

(3) Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2); and

b. Contents of notification. The notification must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed project; and

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; and other NWP(s), regional general permit(s) or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity.

(4) For NWP 12, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

(5) For NWP 14, the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the United States and a statement describing how temporary losses of waters of the United States will be minimized to the maximum extent practicable.

(6) For NWP 14, where the proposed work involves discharges of dredged or fill into waters of the United States resulting in permanent, above-grade fills within 100-year floodplains (as identified on FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps), the notification must include documentation demonstrating that the proposed work complies with the appropriate FEMA or FEMA-approved local floodplain construction requirements.

c. Form of Notification: The standard individual permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all the information required in b.(1)-(6) of General Condition 13. A letter containing the requisite information may also be used.

d. District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may, optionally, submit a proposed mitigation plan with the PCN to expedite the process and the District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the effects on the aquatic environment are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary.

Any compensatory mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the nationwide permit.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he will notify the applicant either:

(1) that the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;

(2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or

(3) that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required in order to ensure no more than minimal adverse effects on the aquatic environment, the activity will be authorized within the 45-day PCN period, including the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the United States will occur until the District Engineer has approved a specific mitigation plan.

e. Agency Coordination. The District Engineer will consider any comments from Federal and State agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse effects on the aquatic environment to a minimal level.

For activities requiring notification to the District Engineer that result in the loss of greater than ½ acre of waters of the United States, the District Engineer will, upon receipt of a notification, provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner), a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the National Marine Fisheries Service. *{With the exception of NWP 37}* These agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to National Marine Fisheries Service within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

f. Wetlands Delineations. Wetland delineations must be prepared in accordance with the current method required by the Corps. *{For NWP 29 see paragraph (b)(9)(iii) for parcels less than ¼ acre in size.}* The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

g. For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work.

h. For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

i. For NWP 14, where the proposed work involves discharges of dredged or fill into waters of the United States resulting in permanent, above-grade fills within 100-year floodplains (as identified on FEMA's Flood Insurance Rate Maps or FEMA-approved local floodplain maps), the notification must include documentation demonstrating that the proposed work complies with the appropriate FEMA or FEMA-approved local floodplain construction requirements.

j. For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work.

k. For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

14. Compliance Certification. Every permittee who has received a Nationwide permit verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter. The certification will include:

a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;

b. A statement that any required mitigation was completed in accordance with the permit conditions; and

c. The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3 acre.

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the United States or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

19. Mitigation. The project must be designed and constructed to avoid and minimize adverse effects to waters of the United States to the maximum extent practicable at the project site (i.e., on site). Mitigation will be required when necessary to ensure that the adverse effects to the aquatic environment are minimal. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal

a. Compensatory mitigation at a minimum 1:1 ratio will be required for all wetland impacts requiring a PCN. Consistent with National Policy, the District Engineer will establish a preference for restoration of wetlands to meet the minimum compensatory mitigation ratio, with preservation used only in exceptional circumstances.

b. To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed;

c. The District Engineer will require restoration, creation, enhancement, or preservation of other aquatic resources in order to offset the authorized impacts to the extent necessary to ensure that the adverse effects on the aquatic environment are minimal. An important element of any compensatory mitigation plan for projects in or near streams or other open waters is the establishment and maintenance, to the maximum extent practicable, of vegetated buffers next to open waters on the project site. The vegetated buffer should consist of native species. The District Engineer will determine the appropriate width of the vegetated buffer and in which cases it will be required. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineer may

require wider vegetated buffers to address documented water quality concerns. If there are open waters on the project site and the District Engineer requires compensatory mitigation for wetland impacts to ensure that the net adverse effects on the aquatic environment are minimal, any vegetated buffer will comprise no more than 1/3 of the remaining compensatory mitigation acreage after the permanently filled wetlands have been replaced on a one-to-one acreage basis. In addition, compensatory mitigation must address adverse effects on wetland functions and values and cannot be used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWPs (e.g., for NWP 39, ¼ acre of wetlands cannot be created to change a ½acre loss of wetlands to a ¼ acre loss; however, ½acre of created wetlands can be used to reduce the impacts of a 1/3 acre loss of wetlands). If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed.

d. To the extent appropriate, permittees should consider mitigation banking and other appropriate forms of compensatory mitigation. If the District Engineer determines that compensatory mitigation is necessary to offset losses of waters of the United States and ensure that the net adverse effects of the authorized work on the aquatic environment are minimal, consolidated mitigation approaches, such as mitigation banks, will be the preferred method of providing compensatory mitigation, unless the District Engineer determines that activity-specific compensatory mitigation is more appropriate, based on which is best for the aquatic environment. These types of mitigation are preferred because they involve larger blocks of protected aquatic environment, are more likely to meet the mitigation goals, and are more easily checked for compliance. If a mitigation bank or other consolidated mitigation approach is not available in the water shed, the District Engineer will consider other appropriate forms of compensatory mitigation to offset the losses of waters of the United States to ensure that the net adverse effects of the authorized work on the aquatic environment are minimal.

20. Spawning Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and must not increase water flows from the project site, relocate water, or redirect water flow beyond preconstruction conditions. In addition, the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows.

22. Adverse Effects From Impoundments. If the activity, including structures and work in navigable waters of the United States or discharge of dredged or fill material, creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the United States or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding national resource waters or other waters officially designated by a State as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment.

Except as noted below, discharges of dredged or fill material into waters of the United States are not authorized by NWP 14, for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the United States may be authorized by the above NWPs in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service has concurred in a determination of compliance with this condition.

26. Fills Within 100-Year Floodplains. For purposes of this general condition 100-year floodplains will be identified through the Federal Emergency Management Agency" (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

a. Discharge Below Headwaters. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills within the 100-year floodplain at or below the point on a stream where the average annual flow is five cubic feet per second (*i.e.,* below headwaters), the prospective permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above-grade fills in waters of the United States within the 100-year floodplain below headwaters comply with FEMA or FEMA-approved local floodplain construction requirements.

b. Discharges in Headwaters (*i.e.,* above the point on a stream where the average annual flow is five cubic feet per second).

(1) Flood Fringe. Discharges of dredged or fill material into waters of the United States resulting in permanent; above-grade fills within the flood fringe of the 100-year floodplain of headwaters are not authorized by NWP 14, unless the prospective permittee notifies the District Engineer in accordance with General Condition 13. The notification must include documentation that such discharges comply with FEMA or FEMA-approved local floodplain construction requirements.

(2) Floodway. Discharges of dredged or fill material into waters of the United States resulting in permanent, above-grade fills with the floodway of the 100-year floodplain of headwaters, the permittee must notify the District Engineer in accordance with General Condition 13 and the notification must include documentation that any permanent, above grade fills proposed in the floodway comply with FEMA or FEMA-approved local floodplain construction requirements.

27. The permitee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

Special Regional Conditions

I. The following waters within the State of North Carolina will be excluded from use of Nationwide Permits #14:

Discharges into Waters of the United States designated by the North Carolina Division of Marine Fisheries as anadromous fish spawning area are prohibited during the period between March 1 and May 30.

II. The following waters within the State of North Carolina will be subject to additional notification requirements for activities authorized by Nationwide Permit #14:

Before the nationwide permits listed above can be utilized in a designated "Outstanding Resource Water" (ORW) (as defined by the North Carolina Division of Water Quality) or a "Primary Nursery Area" (PNA) (as defined by the North Carolina Division of Marine Fisheries) within the State of North Carolina, the prospective permittee must notify the District Engineer with a preconstruction notification pursuant to the procedures identified in Nationwide Permit General Condition #13.

III. The following waters within the State of North Carolina will be subject to additional notification requirements for activities authorized by Nationwide Permits #14:

A. Before the nationwide permits listed above can be utilized in a designated "Area of Environmental Concern" (AEC) in the twenty (20) counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA), a proponent must first obtain the required CAMA permit and furnish a copy of the CAMA permit to the appropriate Wilmington District Regulatory Field Office (Wilmington Field Office – P.O. Box 1890, Wilmington, NC 28402 or Washington Field Office – P.O. Box 1000, Washington, NC 27889).

B. Before the nationwide permits listed above can be utilized on a barrier island of North Carolina, proponents must notify the Wilmington District Engineer in accordance with General Condition 13 and furnish a written statement of compliance with all of the conditions of the applicable nationwide permit.

C. Before the nationwide permits listed above can be utilized in a "Mountain or Piedmont Bog" of North Carolina, proponents must notify the Wilmington District Engineer in accordance with General Condition 13 and furnish a written statement of compliance with all of the conditions of the applicable nationwide permit.

Note: The following wetland community types as identified by the N.C. Natural Heritage Program document entitled, "Classification of Natural communities of North Carolina (Michael P. Schafale and Alan S. Weakley, 1990), are subject to this regional condition.

Mountain Bogs	Piedmont Bogs
Swamp Forest-Bog Complex	Upland depression Swamp Forest
Swamp Forest-Bog Complex (Spruce Subtype	
Southern Appalachian Bog (Northern Subtype)	
Southern Appalachian Bog (Southern Subtype)	
Southern Appalachian Fen	

D. Before the nationwide permits listed above can be utilized within twenty-five (25) designated counties of North Carolina that contain trout waters, proponents must notify the Wilmington District Engineer in accordance with General Condition 13 and furnish a written statement of compliance with all of the conditions of the applicable nationwide permit. Notification will include a letter of comments and recommendations from North Carolina Wildlife Resources Commission (NCWRC), the location of work, a delineation of wetlands, a discussion of alternatives to working in the mountain trout waters and why alternatives were not selected, and a plan to provide compensatory mitigation for all unavoidable adverse impacts to the mountain trout waters. To facilitate coordination with the NCWRC, the proponent may provide a copy of the notification to the NCWRC concurrent with the notification to the District Engineer. The NCWRC will respond both to the proponent and directly to the Corps of Engineers.

The twenty-five (25) designated counties are:

Alleghany	Ashe	Avery
Buncombe	Burke	Caldwell
Cherokee	Clay	Graham
Haywood	Henderson	Jackson
Macon	Madison	McDowell
Mitchell	Polk	Rutherford
Stokes	Surry	Swain
Transylvania	Watauga	Wilkes
Yancey		

To obtain the required letter from the North Carolina Wildlife Resources Commission, a proponent should contact:

North Carolina Wildlife Resources Commission
Habitat Conservation Program Manager
1721 Mail Service Center
Raleigh, NC 27699-1721
Telephone (919) 733-7638

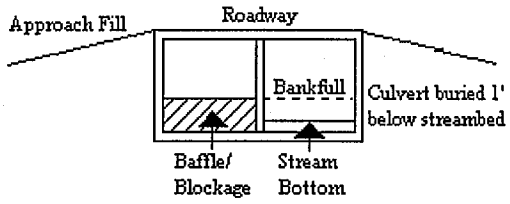
IV. Regional conditions for specific Nationwide Permits within the State of North Carolina are as follows:

a. Measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the United States until the concrete has hardened.

b. Where rip rap material is utilized to stabilize banks and to comply with Nationwide Permit General Condition #3, Soil Erosion and Sediment Controls, the permittee is required to utilize filter cloth prior to the placement of the rip rap material.

c. Natural channel design is to be utilized to the maximum extent practicable for stream relocations. Guidelines published by the N.C. Wildlife Resources Commission and the N.C. Division of Water Quality are available to assist in planning and design.

d. Bankfull flows (or less) will be accommodated through maintaining the existing bankfull channel cross sectional area. Additional culverts at such crossings will be allowed **only** to receive flows exceeding bankfull.



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

Gregory J. Thorpe, Ph.D.
Acting Director
Division of Water Quality

4-A6

September 6, 2001
Haywood County
DWQ Project No. 010409
US 23B (Old Asheville Hwy.) from Waynesville City Limits to SR 1801
F.A. Project STP-23B(1), State Project 8.1942901
TIP Project No. R-2210A

APPROVAL of §401 Water Quality Certification with ADDITIONAL CONDITIONS

Mr. William D. Gilmore, P.E., Manager
Planning and Environmental Branch
North Carolina Department of Transportation
1548 Mail Service Center
Raleigh, NC 27699-1548

Dear Mr. Gilmore:

You have our approval, in accordance with the attached conditions and those listed below, to permanently impact 1,466.16 linear feet of jurisdictional streams resulting in a total of 0.26 acres of surface water impacts to Raccoon Creek and its unnamed tributary in order to construct the widening of US 23B (Old Asheville Highway) from the Waynesville City Limits to SR 1801 (Jerry Liner Road) in Haywood County. The project shall be constructed in accordance with your application dated 9 March 2001 (received 20 March 2001) and additional information provided on 30 August 2001. After reviewing your application, we have decided that this fill is covered by General Water Quality Certification No. 3289 corresponding to the U.S. Army Corps of Engineers Nationwide Permit Number 14. In addition, you should acquire any other federal, state or local permits before you proceed with your project including (but not limited to) Sediment and Erosion Control, Non-Discharge and Water Supply Watershed regulations. This approval will expire with the accompanying §404 permit unless otherwise specified in the Water Quality Certification.

This approval is only valid for the purpose and design that you described in your application except as modified below. If you change your project, you must notify us *in writing*, and you may be required to send us 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 conditions. If total wetland fills for this project (now or in the future) exceed one acre, or if stream impacts exceed 150 linear feet, compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). For this approval to be valid, you must follow the conditions listed in the attached certification and any additional conditions listed below.

1. In-stream work and land disturbance within the 25-foot trout buffer zone are prohibited from January 1 through April 15 at culvert construction sites 2, 3, and 4 on Raccoon Creek to protect the egg and fry stages of trout from off-site sedimentation during construction. All stream relocation and restoration work shall be performed outside the moratorium period as well.
2. Sedimentation and Erosion Control Guidelines for Sensitive Watersheds (15A NCAC 4B .0024) must be implemented prior to any ground-disturbing activities to minimize impacts to

North Carolina Division of Water Quality, 401 Wetlands Certification Unit,
1650 Mail Service Center, Raleigh, NC 27699-1650 (Mailing Address)
2321 Crabtree Blvd., Raleigh, NC 27604-2260 (Location)
919-733-1786 (phone), 919-733-6893 (fax), http://h2o.enr.state.nc.us/ncwetlands/

downstream aquatic resources. Temporary or permanent herbaceous vegetation should be planted on all bare soil *within 15 days* of ground-disturbing activities to provide long term erosion control. If work is to be performed during winter months, erosion control matting shall be used around all stream crossings and adjacent to streams.

3. All in-stream work shall be performed during low flow conditions.
4. New stream channels shall be constructed in the dry and stabilized prior to turning water into them.
5. Storm water shall be directed to buffer areas or retention basins and should not be routed directly into streams. Existing vegetated buffers shall not be mowed in order to utilize it for storm water sheet flow.
6. No live concrete shall come into contact with surface waters until it has hardened.
7. All mechanized equipment used near or in surface waters shall be regularly inspected and maintained to prevent contamination of waters from fuel lubricants, hydraulic fuels, or other toxic materials.
8. The presence of mechanical equipment in stream channels shall be minimized.
9. All culverts required for this project shall be installed in such a manner that the original stream profiles are not altered (i.e. the depth of the channel shall not be reduced by a widening of the streambed). Existing stream dimensions are to be maintained above and below locations of culvert extensions. Culverts shall be installed one foot below the stream to allow for movement of fish and other aquatic life.
10. Use of rip-rap for bank stabilization is to be minimized; rather, native vegetation consisting of Orchard grass, switchgrass, and Ladino clover in the riparian areas is to be planted. Plantings by live staking shall include: willow, red-osier dogwood, silky dogwood, buttonbush, hazel alder, and rough-leaved dogwood as specified in NCDOT's final design plans. If necessary, rip-rap must be limited to the stream bank below the high water mark, and vegetation must be used for stabilization above high water.
11. Rock silt screens at culvert outlets shall be removed at project completion.
12. Any impacts to waters or wetlands associated with waste or borrow pits from this project may require additional mitigation and will be the responsibility of NCDOT.
13. The 1,466.16 linear feet of stream impacts will be mitigated for at a ratio of 1:1.3 by providing 1,902.40 linear feet of on-site stream relocation/restoration using natural channel design. The stream relocation shall be built and maintained according to the approved plans before any mitigation credit is given. If this Office determines that the stream restoration or associated riparian area has become unstable, the stream shall be repaired or stabilized using only natural channel design techniques if possible. Additionally, the vegetation in the riparian shall be maintained and/or replaced according to the approved plans. Rip-rap and other hard structures may only be used if required by the Division of Land Resources or a Delegated Local Program. Additionally, all repair designs must be submitted to and receive written approval from this Office before the repair work is performed. Because the restored stream is proposed as compensatory mitigation for stream impacts, the restored portion and associated riparian area shall be preserved in perpetuity through a preservation easement or some other legally binding mechanism or agreement. The above easement or other legally binding mechanism or agreement must be in place before any mitigation credit shall be given. Additionally, the stream physical and biological monitoring plan shall be followed and reports shall be submitted to this Office after the first year and every other year afterwards for a total of five (5) years. In accordance with 15A NCAC 2R.0500, this contribution will satisfy our compensatory mitigation requirements under 15A NCAC 2H.0506(h).

Upon completion of the project, the NCDOT shall complete and return the enclosed "Certificate of Completion" form to notify NCDWQ when all work included in the §401 Certification has been completed. The responsible party shall complete the attached form and return it to the 401/Wetlands Unit of the NC Division of Water Quality upon completion of the project.

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 letter completes the review of the Division of Water Quality under Section 401 of the Clean Water Act. If you have any questions, please telephone Ms. Cynthia Van Der Wiele at 919-733-9646 or Mr. Michael R. Parker of the Asheville Regional Office at 828.251.6208 x256.

Sincerely,

Gregory J. Thorpe, Ph.D.
Acting Director

Attachment

Pc: Wilmington District Corps of Engineers
Corps of Engineers Asheville Field Office
NCDWQ Asheville Regional Office
Central Files
File Copy

Michael F. Easley
Governor

William G. Ross, Jr., Secretary
Department of Environment and Natural Resources

Gregory J. Thorpe, Ph.D.
Acting Director
Division of Water Quality

DWQ 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/Wetlands Unit, North Carolina Division of Water Quality, 1621 Mail Service Center, Raleigh, NC, 27699-1621.This form may be returned to DWQ 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:_____

If this project was designed by a Certified Professional

I, _____, as a duly registered Professional _____ (i.e., Engineer, Landscape Architect, Surveyor, ect.) 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 _____