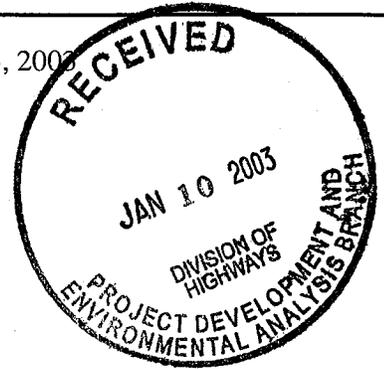


Michael F. Easley, Governor
William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources

Alan W. Klimek, P.E. Director
Division of Water Quality

47m

January 3, 2003



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

Dear Dr. Thorpe:

Re: EXTENSION to Water Quality Certification Pursuant to §401 of the Federal Clean Water Act,
Proposed I-485 (Western Charlotte Outer Loop). Mecklenburg County
TIP Project Nos. R-2248 AC, AD and BA.
DWQ Project No. 990337. COE #199930776.

Attached hereto is a copy of the Extension to Certification No. 3243 issued to The North Carolina Department of Transportation dated January 3, 2003.

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

Sincerely,

Alan W. Klimek, P.E.

Attachments

cc: Wilmington District COE
John Thomas, USACE Raleigh Field Office
NCDWQ Winston-Salem Regional Office
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, Section .0500. This certification authorizes the NCDOT to incur the following permanent impacts:

- 2.56 acres of jurisdictional wetlands;
- 13,791 linear feet of jurisdictional stream channels in Mecklenburg County.

The West Charlotte Outer Loop project (from Brown Grier Road to I-85) shall be constructed pursuant to the Application dated April 1999, additional information dated August 20, 1999, and an application requesting an extension to the certification dated December 4, 2002. The extension requests a change to the 509 linear feet of on-site stream mitigation site (1018 feet of mitigation) in favor of payment to the NC Wetlands Restoration Program (WRP).

The application provides adequate assurance that the discharge of fill material into the waters of: Coffey Creek, Steele Creek, Beaverdam Creek, Little Paw Creek, Ticer Branch, and Paw Creek and their unnamed tributaries, as well as an unnamed tributary to the Catawba River, 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 application, as described in the Public Notice. If this project changes, you are required to notify the DWQ *in writing*, and will be required to 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 this project incurs additional wetland or stream impacts, 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, Non-discharge and Water Supply watershed regulations. *This Certification shall expire on June 30, 2004 or on the same day as the expiration date of the corresponding Corps of Engineers Permit, whichever is sooner.*

Condition(s) of Certification:

1. If an environmental document is required, this Certification is not valid until a FONSI or ROD is issued by the State Clearinghouse.
2. The applicant must follow the appropriate sediment and erosion control practices which equal or exceed those outlined in the most recent version of the *North Carolina Sediment and Erosion Control Planning and Design Manual* or the *North Carolina Surface Mining Manual*, whichever is more appropriate (available from the Division of Land Resources (DLR) in the DENR Regional or Central Offices) and shall be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices in order to assure compliance with the appropriate turbidity water quality standard (50 NTUs in all fresh water streams and rivers not designated as trout waters, 25 NTUs in all lakes and reservoirs, and 10 NTUs in trout waters);

3. NCDOT shall use *Best Management Practices for the Protection of Surface Waters* (NCDOT March 1997), specifically using all applicable preventive and control measures during the design, construction and maintenance of this project. These measures shall be implemented prior to any ground-disturbing activities to minimize impacts to downstream aquatic resources.
4. Measures shall be taken to prevent live or fresh concrete from coming into contact with waters of the State until the concrete has hardened.
5. Storm water shall be directed to vegetated buffer areas, grass-lined ditches or other means appropriate to the site for the purpose of pre-treating storm water runoff, and must not be routed directly into streams. Mowing of existing vegetated buffers is strongly discouraged, so that they may be utilized for storm water sheet flow.
6. All sediment and erosion control devices shall not be placed in wetlands or waters to the maximum extension practicable. If placement of these devices is unavoidable, they shall be removed and the natural grade restored after the Division of Land Resources has released the project.
7. There shall be no excavation from or waste disposal into jurisdictional wetlands or waters associated with this permit without appropriate modification of this Certification. If this occurs, compensatory mitigation will be required since it is a direct impact from road construction activities.
8. Placement of culverts and other structures in waters, streams, and wetlands shall be placed below the elevation of the streambed to allow low flow passage of water and aquatic life unless it can be shown to DWQ that providing passage would be impractical. Design and placement of culverts and other structures including temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands or stream beds or banks, adjacent to or upstream and down stream of the above structures. The applicant is required to provide evidence that the equilibrium shall be maintained if requested in writing by DWQ.
9. *Compensatory Mitigation:* Compensatory mitigation shall be the same as that approved by the US Army Corps of Engineers as long as the mitigation required equals a ratio of 1:1 restoration or creation of lost wetland acres as described in 15A NCAC 2H.0506 (h)(6). The following are the impacts will be incurred:
 - a. Wetland impacts of 2.56 acres of riverine wetlands to be mitigated at a 2:1 ratio (5.12 acres of restoration) at the Long Creek Mitigation Site.
 - b. Total stream impacts of 13,791 linear feet, including 1,727 linear feet of on-site stream relocations.
 - 12,064 linear feet of stream impacts will be mitigated at a 2:1 ratio through an in lieu payment to WRP for a total of 24,128 linear feet of mitigation.
 - Due to the failure to provide suitable habitat replacement in the on-site stream relocation, a modification to this original stream mitigation scheme is necessary. NCDWQ understands that 509 linear feet of stream impacts will require mitigation at a 1:1 ratio. NCDOT will purchase an additional 509 linear feet of stream mitigation from WRP.
 - The remaining 1,218 linear feet of on-site stream relocations shall be designed using natural channel design and performed and maintained according to 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. Additionally, the vegetation in the riparian area 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.

- Since the on-site stream relocations are proposed as compensatory mitigation for project impacts, the restored portions and associated riparian buffer areas 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, physical and biological monitoring plans shall be followed and reports shall be submitted to this Office after the first year 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). Until plans are received and approved for the stream relocation using natural channel design, wetland or stream fill shall not occur.

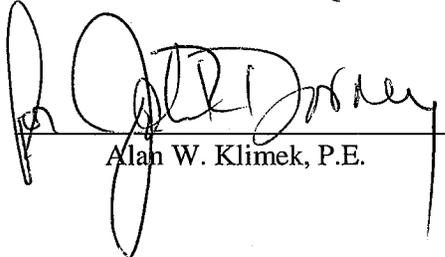
10. Upon completion of the project, the NCDOT shall complete and return the enclosed "Certification of Completion Form" to notify DWQ when all work included in the 401 Certification has been completed. The responsible party shall complete the attached form and return it to the 401/Wetlands Unit of the Division of Water Quality upon completion of the project. NCDOT is strongly advised to send in photographs upstream and downstream of each culvert to document correct installation.

The Applicant shall require its contractors (and/or agents) to comply with all of the terms of this Certification, and shall provide each of its contractors (and/or agents) a copy of this Certification. Violations of any condition herein set forth shall 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.

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 3rd day of January 2003

DIVISION OF WATER QUALITY



Alan W. Klimek, P.E.

WQC No. 3243

Certificate of Completion

DWQ Project No.: _____

County: _____

Applicant: _____

Project Name: _____

Date of Issuance of 401 Water Quality Certification: _____

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, 1650 Mail Service Center, Raleigh, NC, 27699-1650. 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, 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, the approved plans and specifications, and other supporting materials.

Signature: _____ Date: _____

Engineer's Certification

_____ Partial _____ Final

I, _____, as a duly registered Professional Engineer in the State of North Carolina, having been authorized to observe (periodically, weekly, full time) the construction of the project, for the Permittee hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to be built within substantial compliance and intent of the 401 Water Quality Certification, the approved plans and specifications, and other supporting materials.

Signature _____

Registration No. _____

Date _____

**NORTH CAROLINA – DIVISION OF WATER QUALITY
401 WATER QUALITY CERTIFICATION
SUMMARY OF PERMITTED IMPACTS AND MITIGATION REQUIREMENTS**

In accordance with 15A NCAC 2H.0500, NCDOT, DWQ Project No. 990337, is authorized to impact the surface waters of the State of North Carolina as indicated below for the purpose of constructing West Charlotte Outer Loop (I-485) from Brown Grier Road to I-85 west of Charlotte. All activities associated with these authorized impacts must be conducted in accordance with the conditions listed in the attached certification transmittal letter. **THIS CERTIFICATION IS NOT VALID WITHOUT THE ATTACHMENTS.**

COMPENSATORY MITIGATION REQUIREMENTS FOR WETLAND RESTORATION:

LOCATION: West Charlotte Outer Loop (I-485) from Brown Grier Road to I-85 west of Charlotte
COUNTY: Mecklenburg
BASIN/SUBBASIN: Catawba River Basin, Cataloging Units 03050103 and 03050101

As required by 15A NCAC 2B .0250 and 15A NCAC 2H.0506(h), and the conditions of this certification, you are required to compensate for the above impacts through the restoration, creation, enhancement or preservation of wetlands, buffers, and surface waters as outlined below prior to conducting any activities that impact or degrade waters of the state.

Note: Acreage requirements proposed to be mitigated through the Wetland Restoration Program must be rounded to one-quarter increments according to 15A 2R.0503(b).

- 509 linear feet of stream impacts (to be mitigated at a 1:1 ratio).

One of the options you have available to satisfy the compensatory mitigation requirements is through payment of a fee to the Wetland Restoration Fund per 15A NCAC 2R.0503. If you choose this option, please sign this form and mail it to the Wetlands Restoration Fund at the address listed below. An invoice for the appropriate amount of payment will be sent to you upon receipt of this form. **PLEASE NOTE, THE ABOVE IMPACTS ARE NOT AUTHORIZED UNTIL YOU RECEIVE NOTIFICATION THAT YOUR PAYMENT HAS BEEN PROCESSED BY THE WETLANDS RESTORATION PROGRAM.**

Signature

Date

WETLANDS RESTORATION PROGRAM
DIVISION OF WATER QUALITY
1619 Mail Service Center
RALEIGH, NC, 27699-1619
(919) 733-5219