



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
P.O. BOX 1890
WILMINGTON, NORTH CAROLINA 28402-1890



October 23, 1997

Regulatory Branch

Action ID No. 199705883



Mr. H. Franklin Vick, P.E., Manager
Planning and Environmental Branch
North Carolina Department of Transportation
Post Office Box 25201
Raleigh, North Carolina 27611-5201

Dear Mr. Vick:

Reference the Department of the Army (DA) permit issued to you on August 7, 1996, and your subsequent written request dated June 17, 1997, for a permit modification to convert "temporary" wetland impacts to "permanent" wetland impacts associated with the widening of 9.3 miles of U.S. 17, including replacement of the bridges over the Chowan River and Pembroke Creek, from 0.5 miles west of the Chowan River to west of U.S. 17 Business, east of Edenton, Chowan and Bertie Counties, North Carolina (Tip Nos. ~~R-2512A~~ and ~~R-2512B~~; State Project No. 8.T010602). Your previous DA permit was conditioned requiring you to restore temporary wetland impacts resulting from the construction of haul roads and construction pads. Efforts were made to restore the sites, but these efforts were not successful. In this regard, the North Carolina Department of Transportation (NCDOT) proposed to mitigate for the 2.6 acres of permanent riverine impacts by debiting from the Company Swamp Mitigation Bank (CSMB) at a ratio of 10:1.

This modification request has been coordinated with the North Carolina Division of Water Quality, and other appropriate State and Federal agencies. The National Marine Fisheries Service (NMFS) responded to the public notice by letter dated July 10, 1997, and did not agree that the proposal to debit from the CSMB was acceptable to compensate for losses of riverine wetlands adjacent to the Chowan River. The NMFS recommended at a minimum that adequate mitigation must provide a 1:1 replacement ratio, in-kind and in the same river basin as that of the losses. The Corps agrees with NMFS and tasked NCDOT with finding suitable riverine mitigation within the Chowan River basin.

cc 4 / PUBLIC / P & E / MET PLANS / PEMBROKE

NCDOT responded to the NMFS and Corps request to perform on-site and in-kind mitigation by letter dated August 20, 1997. You now propose to offset the permanent riverine wetland losses by restoring an equal quantity of bottomland hardwood wetlands adjacent to Pembroke Creek in Chowan County. Therefore, the permit is hereby modified to include the work as described above. It is understood that all other conditions of the original permit remain applicable and that the expiration date is unchanged. In addition, this permit modification is contingent on the following special permit conditions:

a. The mitigation work to restore wetlands at the Pembroke Creek site will be undertaken as referenced in the August 20, 1997, letter from Mr. H. Franklin Vick to Mr. Michael F. Bell, to the extent necessary to restore, monitor and maintain 2.6 acres of riverine wetlands to the satisfaction of the Corps of Engineers. The permittee will submit a final compensatory mitigation plan and construction schedule within 45 days of the date of this permit modification. If the plan is not approved by the Corps of Engineers within 60 days of the date of this permit modification, the permittee shall cease all work within wetlands associated with this permit action.

b. The permittee shall identify and survey the acreage at the Pembroke Creek site utilized to satisfy condition (a.) above and provide a copy of the survey to the U.S. Army Corps of Engineers, Washington Regulatory Field Office, NCDOT Project Manager, within 30 days of the date of this permit modification.

c. The mitigation property will be maintained by the permittee in it's natural condition, as altered by the implementation of the mitigation plan, in perpetuity. Prohibited activities within the mitigation area specifically includes, but are not limited to, the construction or placement of buildings, signs, or any debris, waste or garbage; excavation, grading; dredging; leveling or other earth moving activity; cutting, removal or damage of any vegetation; any activity which would impact the drainage or water quality on the site; except as required by the implementation of the mitigation plan, described in condition (a.), above.

d. Condition (c.) above runs with the land. The permittee shall not sell, lease, or otherwise convey any interest in the properties making up the mitigation site without first providing 60 days written notice to the Corps of Engineers of the proposed conveyance. The instrument effecting such conveyance shall include legally binding restrictions on the use of the mitigation property as described in condition (a.) and (b.) above, to be enforceable by the permittee as well as the U.S. Army Corps of Engineers, Wilmington District. The instrument establishing such restrictions shall be subject to the approval of the Corps of Engineers. The permittee shall enforce the terms of the required restrictions.

e. The permittee will further mitigate the 2.6 acres of high quality riverine wetland losses adjacent to the Chowan River by debiting 26.0 acres from the Company Swamp Mitigation Bank in Bertie County.

f. Within two weeks of the date of this permit modification, the permittee shall provide the U.S. Army Corps of Engineers, Washington Regulatory Field Office, NCDOT Regulatory Project Manager, with an updated version of the "NCDOT Mitigation Ledger" documenting utilization of the Pembroke Creek Mitigation site.

Any questions regarding this correspondence may be directed to Mr. Michael Bell, NCDOT Coordinator/Regulatory Project Manager at the Washington Regulatory Field Office, telephone (919) 975-1616, extension 26.

Sincerely,


 Terry R. Youngbluth
Colonel, U.S. Army
District Engineer

Copies Furnished:

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