

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
 November 2, 2006

Dr. Greg Thorpe, Ph.D., Manager
 Planning and Environmental Branch
 North Carolina Department of Transportation
 1548 Mail Service Center
 Raleigh, North Carolina, 27699-1548

Subject: Third Modification to the 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act with ADDITIONAL CONDITIONS for the Widening of NC 49 from Harrisburg to Zion Church Road, Cabarrus County, Federal Aid Project No. NHF-28-1(5), State Project No. 8.1661001, TIP R-2533 A&B, DWQ Project No. 01-1274

Dear Dr. Thorpe:

Attached hereto is a modification of Certification No. 3330 issued to The North Carolina Department of Transportation (NCDOT) and dated October 11, 2001. This modification is applicable only to the additional proposed activities. All authorized activities and conditions of the certification associated with the original Water Quality Certification, dated October 11, 2001, and additional modifications dated November 26, 2001, and February 13, 2002, still apply except where superceded by this certification.

If we can be of further assistance, please do not hesitate to contact Polly Lespinasse at (704) 663-1699.

Sincerely,

for Alan W. Klimek, P.E.
 Director

Attachments

- cc: Jean Manuele, US Army Corps of Engineers Raleigh Field Office
- Larry Thompson, Division 10 Environmental Officer
- Marla Chambers, NC Wildlife Resources Commission
- Marella Buncick, US Fish and Wildlife Service
- Sonia Gregory, DWQ Central Regional Office
- File Copy



Modification to the 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act with ADDITIONAL CONDITIONS

THIS CERTIFICATION is issued in conformity with the requirements of Section 401 Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Division of Water Quality (DWQ) Regulations in 15 NCAC 2H .0500. The original certification authorized the following mitigation associated with 4,072 linear feet of stream impacts for this project located in Cabarrus County:

- 1,936 linear feet of on-site relocation
- 2,160 linear feet of off-site perennial stream restoration (Shepherd's Tree Mitigation Area)
- 2,540 linear feet of off-site intermittent stream restoration (Shepherd's Tree Mitigation Area)
- 2,223 linear feet of off-site perennial stream enhancement (Shepherd's Tree Mitigation Area)

This certification authorizes the NCDOT to provide mitigation for 4,072 linear feet of impacted jurisdictional streams in Cabarrus County as follows:

- 1,936 linear feet of on-site relocation (1:1 mitigation ratio)
- 4,272 linear feet of perennial stream restoration (2:1 mitigation ratio) at the Shepherd's Tree Mitigation Site located in Iredell County.

The application provides adequate assurance that the discharge of fill material into the waters and wetlands of the Catawba River Basin in conjunction with the proposed development will not result in a violation of applicable Water Quality Standards and discharge guidelines. Therefore, the State of North Carolina certifies that this activity will not violate the applicable portions of Sections 301, 302, 303, 306, 307 of PL 92-500 and PL 95-217 if conducted in accordance with the application and conditions hereinafter set forth.

This approval is only valid for the purpose that you submitted in your modified application received by the Division of Water Quality (DWQ) on September 18, 2006. All the authorized activities and conditions of certification associated with the original Water Quality Certification dated October 11, 2001, and additional modifications dated November 26, 2001, and February 13, 2002, still apply except where superceded by this certification. Should your project change, you are required to notify the DWQ and submit a new application. If the property is sold, the new owner must be given a copy of this Certification and approval letter, and is thereby responsible for complying with all the conditions. If any additional wetland impacts, or stream impacts, for this project (now or in the future) exceed one acre or 150 linear feet, respectively, additional compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). For this approval to remain valid, you are required to comply with all the conditions listed below. In addition, you should obtain all other federal, state or local permits before proceeding with your project including (but not limited to) Sediment and Erosion Control, Non-Discharge and Water Supply Watershed regulations. This Certification shall expire on the same day as the expiration date of the corresponding Corps of Engineers Permit.

Condition(s) of Certification:

1. Upon completion of the project, the NCDOT shall complete and return the enclosed "Certification of Completion Form" to notify the 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.
2. All other conditions written into the previous Water Quality Certifications, dated October 11, 2001, and additional modifications dated November 26, 2001, and February 13, 2002, for the project still apply.

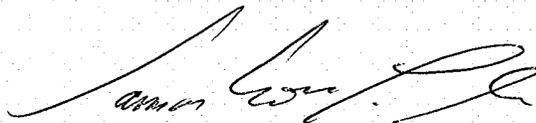
3. Continuing Compliance. NCDOT shall conduct its activities in a manner so as not to contravene any state water quality standard [including any requirements for compliance with section 303(d) of the Clean Water Act] and any other appropriate requirements of state and federal law. If DWQ determines that such standards or laws are not being met (including the failure to sustain a designated or achieved use) or that state or federal law is being violated, or that further conditions are necessary to assure compliance, DWQ may reevaluate and modify this certification to include conditions appropriate to assure compliance with such standards and requirements in accordance with 15 A NCAC 2H.0507(d). Before codifying the certification, DWQ shall notify NCDOT and the USACE, provide public notice in accordance with 15A NCAC 2H.0503, and provide opportunity for public hearing in accordance with 15A NCAC 2H.0504. Any new or revised conditions shall be provided to NCDOT in writing, shall be provided to the USACE for reference in any permit issued pursuant to Section 404 of the Clean Water Act, and shall also become conditions of the 404 Permit for the project.

Violations of any condition herein set forth may result in revocation of this Certification and may result in criminal and/or civil penalties. This Certification shall become null and void unless the above conditions are made conditions of the Federal 404 Permit. This Certification shall expire upon the expiration of the 404 Permit.

If this Certification is unacceptable to you, have the right to an adjudicatory hearing upon written request within sixty (60) days following receipt of this Certification. This request must be in the form of a written petition conforming to Chapter 150B of the North Carolina General Statutes and filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. If modifications are made to an original Certification, you have the right to an adjudicatory hearing on the modifications upon written request within sixty (60) days following receipt of the Certification. Unless such demands are made, this Certification shall be final and binding.

This the 2nd day of October 2006

DIVISION OF WATER QUALITY



for Alan W. Klimek, P.E.
Director

WQC No. 3330

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 and 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 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 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, etc.) 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 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: _____