



North Carolina Department of Environment and Natural Resources

Division of Water Quality  
Coleen H. Sullins  
Director

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Division of Highways

Dee Freeman  
Secretary

Beverly Eaves Perdue  
Governor

October 25, 2010

OCT 27 2010

Preconstruction  
Project Development and  
Environmental Analysis Branch

Steven D. DeWitt, P.E., Chief Engineer  
North Carolina Turnpike Authority  
1578 Mail Service Center  
Raleigh, North Carolina, 27699-1578

Subject: Modification to the 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act and JORDAN BUFFER RULES, with ADDITIONAL CONDITIONS for Western Wake Freeway (NC 540) in Wake County, Federal Aid Project No. BRSTP-000S(491), State Project No. 6.408006T, TIP No. R-2635.  
DWQ Project No. 20071470 ver. 3.

Dear Mr. DeWitt:

Attached hereto is a modification of Water Quality Certification No. 3734 issued to The North Carolina Turnpike Authority (NCTA) dated September 22, 2008.

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

Sincerely,

Coleen H. Sullins  
Director

Attachments

- cc: Eric Alsmeyer, US Army Corps of Engineers, Raleigh Field Office
- Shannon Sweitzer, NC Turnpike Authority
- Chris Murray, NCDOT Division 5
- Dr. Gregory J. Thorpe, NCDOT PDEA
- Philip Todd, SEPI
- Beth Harmon, Ecosystem Enhancement Program
- File Copy

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OCT 28 2010

DIVISION OF HIGHWAYS  
PDEA-OFFICE OF NATURAL ENVIRONMENT

**Modification to the 401 Water Quality Certification Pursuant to Section 401 of the Federal Clean Water Act and JORDAN BUFFER RULES, 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 (NCDWQ) Regulations in 15 NCAC 2H .0500 and 15A NCAC 2B.0267. This certification modification authorizes the NCTA to impact additional 0.06 acres of jurisdictional wetlands, 233 linear feet of jurisdictional streams and 27,487 square feet of protected riparian buffers in Wake County. The project shall be constructed pursuant to the modification request dated received October 15, 2010. The additional authorized impacts are as described below:

**Additional Stream Impacts in the Cape Fear River Basin**

Section & Site	Permanent Impacts to Intermittent Stream (linear ft)	Temporary Impacts to Intermittent Stream (linear ft)	Total Additional Stream Impact (linear ft)	Stream Impacts Requiring Mitigation (linear ft)
B 16	+ 202	- 22	+ 180	+ 202
C 11	+ 38	- 33	+ 5	0
C 29	0	+ 48	+ 48	0
<b>Total</b>	<b>+ 240</b>	<b>- 7</b>	<b>+ 233</b>	<b>+ 202</b>

**Total Additional Stream Impact for Project: 233 linear feet**

**Additional Wetland Impacts in the Cape Fear River Basin**

Section & Site	Permanent Fill (ac)	Temporary Fill (ac)	Total Additional Wetland Impact (ac)	Wetland Impacts Requiring Mitigation (ac)
B 17	0.06	0	0.06	0.06
<b>Total</b>	<b>0.06</b>	<b>0</b>	<b>0.06</b>	<b>0.06</b>

**Total Additional Wetland Impact for Project: 0.06 acres.**

**Additional Jordan Riparian Buffer Impacts**

Site	Zone 1 Impact (sq ft)	minus Wetlands in Zone 1 (sq ft)	= Zone 1 Buffers (not wetlands) (sq ft)	Zone 1 Buffer Mitigation Required (using 3:1 ratio)	Zone 2 Impact (sq ft)	minus Wetlands in Zone 2 (sq ft)	= Zone 2 Buffers (not wetlands) (sq ft)	Zone 2 Buffer Mitigation Required (using 1.5:1 ratio)
B 16	13410	0	13410	40230	8651	0	8651	12977
C 29	3107	0	3107	N/A	2319	0	2319	N/A
<b>Totals</b>	<b>16517</b>	<b>0</b>	<b>16517</b>	<b>40230</b>	<b>10970</b>	<b>0</b>	<b>10970</b>	<b>12977</b>

\* n/a = Utility work in buffer is allowable with approval; no mitigation required.

**Total Additional Buffer Impact for Project: 27,487 square feet.**

The application provides adequate assurance that the discharge of fill material into the waters of the Cape Fear 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 and design that you submitted in your modification application dated received October 14, 2010. All the authorized activities and conditions of certification associated with the original Water Quality Certification dated September 22, 2008 and modified May 5, 2010 still apply except where superceded by this certification. Should your project change, you are required to notify NCDWQ 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). Additional buffer impacts may require compensatory mitigation as described in 15A NCAC.0268. 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, Coastal Stormwater, 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.

**Conditions of Certification:**

1. Compensatory mitigation for an additional 202 linear feet of impact to streams is required. We understand that you have chosen to perform compensatory mitigation for impacts to streams through the North Carolina Ecosystem Enhancement Program (EEP), and that the EEP has agreed to implement the mitigation for the project. EEP has indicated in a letter dated October 13, 2010 that they will assume responsibility for satisfying the federal Clean Water Act compensatory mitigation requirements for the above-referenced project, in accordance with the MOU between the NCDENR and US Corps of Engineers, Wilmington District, dated November 4, 1998.
2. Compensatory mitigation for additional impacts to 0.06 acres of riparian wetlands at a 2:1 ratio is required. We understand that you have chosen to perform compensatory mitigation for impacts to wetlands through the North Carolina Ecosystem Enhancement Program (EEP), and that the EEP has agreed to implement the mitigation for the project. EEP has indicated in a letter dated October 13, 2010 that they will assume responsibility for satisfying the federal Clean Water Act compensatory mitigation requirements for the above-referenced project, in accordance with the MOU between the NCDENR and US Corps of Engineers, Wilmington District, dated November 4, 1998.
3. Compensatory mitigation for additional impacts to 13,410 square feet of protected riparian buffers in Zone 1 and 8,651 square feet of protected riparian buffers in Zone 2 shall be required. We understand that you have chosen to perform compensatory mitigation for impacts to protected buffers through use of the North Carolina Ecosystem Enhancement Program (EEP). Mitigation for unavoidable impacts to Jordan Riparian Buffers shall be provided in the Jordan Lake Basin and done in accordance with 15A NCAC 2B.0267. EEP has indicated in a letter dated October 13, 2010 that they will assume responsibility for satisfying the compensatory mitigation requirements for the above-referenced project, in accordance with the Tri-Party MOA signed on July 22, 2003 and the Dual-Party MOA signed on April 12, 2004.
4. All other conditions written into the previous Water Quality Certification dated September 22, 2008 and the modification dated May 5, 2010 for this project still apply.

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 and/or Coastal Area Management Act Permit. This Certification shall expire upon the expiration of the 404 or CAMA permit.

If you wish to contest any statement in the attached Certification you must file a petition for an administrative hearing. You may obtain the petition form from the office of Administrative hearings. You must file the petition with the office of Administrative Hearings within sixty (60) days of receipt of this notice. A petition is considered filed when it is received in the office of Administrative Hearings during normal office hours. The Office of Administrative Hearings accepts filings Monday through Friday between the hours of 8:00am and 5:00pm, except for official state holidays. The original and one (1) copy of the petition must be filed with the Office of Administrative Hearings.

The petition may be faxed-provided the original and one copy of the document is received by the Office of Administrative Hearings within five (5) business days following the faxed transmission.

The mailing address for the Office of Administrative Hearings is:

Office of Administrative Hearings  
6714 Mail Service Center  
Raleigh, NC 27699-6714  
Telephone: (919)-733-2698, Facsimile: (919)-733-3478

A copy of the petition must also be served on DENR as follows:

Ms. Mary Penny Thompson, General Counsel  
Department of Environment and Natural Resources  
1601 Mail Service Center  
Raleigh, NC 27699-1601

This the 22nd day of October 2010

DIVISION OF WATER QUALITY



Coleen H. Sullins  
Director

WQC No. 3734