

State of North Carolina  
Department of Environment  
and Natural Resources  
Division of Water Quality



James B. Hunt, Jr., Governor  
Wayne McDevitt, Secretary  
A. Preston Howard, Jr., P.E., Director

January 4, 1999

Mr. William Gilmore, P.E.  
Manager, Planning and Environmental Branch  
North Carolina Department of Transportation  
PO Box 25201  
Raleigh NC 27611-2501

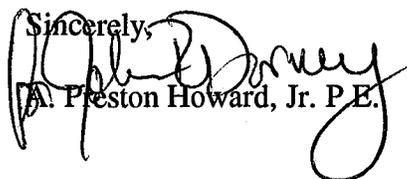


Dear Mr. Gilmore:

Re: Certification Pursuant to Section 401 of the Federal Clean Water Act,  
Proposed Smith Creek Parkway from 23<sup>rd</sup> Street to NC 132  
WQC Project # 960257; COE Action ID. #199300597; T.I.P. No. U-92A  
New Hanover County

Attached hereto is a copy of Certification No. 3077 issued to NC DOT dated January 4, 1999. This replaces the ones issued on 24 March 1997, 3 October 1997, and 2 June 1998.

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

Sincerely,  
  
A. Preston Howard, Jr. P.E.

Attachments

960257mod

cc: Wilmington District Corps of Engineers  
Corps of Engineers Wilmington Field Office  
Wilmington DWQ Regional Office  
Mr. John Dorney  
Mr. John Parker, Division of Coastal Management  
Central Files

Division of Water Quality • Environmental Sciences Branch  
Enviro. Sciences Branch, 4401 Reedy Creek Rd., Raleigh, NC 27607 Telephone 919-733-1786 FAX # 733-9959  
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## **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 to the NCDOT resulting in 20.44 acres of permanent wetland impact, 0.39 acres of temporary wetland impact, and 0.67 acres of water impact in New Hanover County pursuant to an application filed on the 15<sup>th</sup> day of March 1997 to construct the Smith Creek Parkway (U-92A).

The application provides adequate assurance that the discharge of fill material into the waters of Smith Creek, Spring Branch and Hurst Branch 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 you change your project, you must notify us and send us a new application for a new certification. If the property is sold, the new owner must be given a copy of the Certification and approval letter and is thereby responsible for complying with all conditions. If additional wetland fill is later required for this project, 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 below. In addition, you should get any other federal, state or local permits before you go ahead with your project including (but not limited to) Sediment and Erosion control, Coastal Stormwater, Non-discharge and Water Supply watershed regulations.

### **Condition(s) of Certification:**

1. Appropriate sediment and erosion control practices which exceed or equal 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" (available from the Division of Land Resources in the DENR Regional or Central Offices) shall be utilized to prevent exceedances of the appropriate turbidity water quality standard (50 NTU's in all fresh water streams and rivers not designated as trout waters; 25 NTU's in all lakes and reservoirs, and all saltwater classes; and 10 NTU's in trout waters);
2. All sediment and erosion control measures placed in wetlands or waters shall be removed and the natural grade restored after the Division of Land Resources has released the project;
3. At the Hurst Creek crossing, the permittee or its contractor shall install four (4) 72-inch concrete pipe culverts in the causeway fill. The culverts will be placed generally parallel to the box culvert on 30-foot centers measured from the

nearest edge of the box culvert. The invert of the culverts should be at least one (1) foot below the grade of the existing floodplain.

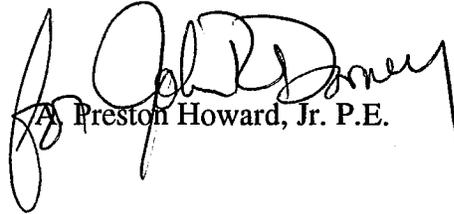
4. DOT shall provide 20 acres of compensatory wetland mitigation onsite so that water of Smith Creek will not be degraded. These 20 acres shall be in the form of creation and/or restoration at the Smith Creek Mitigation Site. At least 10 acres must be either bottomland hardwoods and/or swamp forest. The Smith Creek Mitigation Site shall be constructed immediately following the let of U-92A.
5. In addition to condition 4, DOT shall provide compensatory mitigation in accordance with the Corps of Engineers. DWQ shall be copied on the approved ratio, location, size and method of mitigation (restoration, enhancement, creation and preservation).
6. Measures shall be taken to prevent live or fresh concrete from coming into contact with waters of the state until the concrete has hardened;
7. Should waste or borrow sites be located in wetlands, compensatory mitigation will be required since it is a direct impact from construction activities;
8. Land clearing in wetlands shall conform to Method II (no clearing beyond toe of slope).
9. Reference your request of August 11, 1997 (via correspondence from Division 3) to place fill in an additional 0.243 acre of jurisdictional wetland to construct two driveway accesses to private property. These driveways have been located to access upland areas offsite. The 401 Water Quality Certification is hereby modified to allow construction of these driveways, provided that you mitigate these impacts with an additional 0.49 acre of wetland restoration or creation. Construction of this mitigation shall be accomplished by the end of the U-92A construction period (currently set for 2002). This mitigation area shall be included with the Smith Creek mitigation area as described under revised Condition 4 above.
10. Reference your request of December 2, 1998 (received December 3, 1998) to construct a temporary haul road and temporary work bridge in order to begin work on the Smith Creek Mitigation Site. The 401 Water Quality Certification is hereby modified to allow construction of these temporary access areas. This will include 0.39 acre of temporary fill or clearing in wetlands. This area is already included in the permitted permanent fill area of U-92A, although construction will not reach this area in 1999. Mitigation for this area is accounted for as described under Condition 5 above.

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 404 Permit. This Certification shall expire upon 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, P.O. Box 27447, Raleigh, N.C. 27611-7447. 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 4th day of January 1999

DIVISION OF WATER QUALITY



A. Preston Howard, Jr. P.E.

WQC # 3077