Stream Restoration of Mill Pond Creek at Rugby Middle School

ADDENDUM #4

May 29, 2015

Please incorporate the following in to the bid documents:

Approval of 401 Water Quality Certification with Additional Conditions, May 29, 2015 with attachments: GC 3885 and Certificate of Completion

All conditions of the permit are to be adhered to in the construction of the project.
Subject: APPROVAL OF 401 WATER QUALITY CERTIFICATION WITH ADDITIONAL CONDITIONS
Rugby Middle School Stream Restoration Project

Dear Mr. Wallin:

You have our approval for the impacts listed below for the purpose described in your application dated March 26, 2015, and received by the Division of Water Resources (Division) on March 30, 2015, with subsequent information on May 6, 2015 and May 27, 2015. These impacts are covered by the attached Water Quality General Certification Number 3885 and the additional conditions listed below. This certification is associated with the use of Nationwide Permit Number 27 once it is issued to you by the U.S. Army Corps of Engineers. Please note that you should get any other federal, state or local permits before proceeding with your project, including those required by (but not limited to) Sediment and Erosion Control, Non-Discharge, Water Supply Watershed, and Trout Buffer regulations.

This approval requires you to follow the conditions listed in the enclosed certification(s) or general permit and the following additional conditions:

1. The following impacts are hereby approved provided that all of the other specific and general conditions of the Certification, General Permit and/or Buffer Rules are met. No other impacts are approved, including incidental impacts. [15A NCAC 02H .0506(b) and/or (c)]

<table>
<thead>
<tr>
<th>Type of Impact</th>
<th>Amount Approved (units) Permanent</th>
<th>Amount Approved (units) Temporary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Stream</td>
<td></td>
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<tr>
<td>Impact S1</td>
<td>550 (linear feet)</td>
<td></td>
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<tr>
<td>Impact S2</td>
<td>1,000 (linear feet)</td>
<td></td>
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</tbody>
</table>
2. This approval is for the purpose and design described in your application and additional information received on May 6, 2015 and May 27, 2015. The plans and specifications for this project are incorporated by reference as part of the Certification/Authorization. If you change your project, you must notify the Division and you may be required to submit a new application package with the appropriate fee. If the property is sold, the new owner must be given a copy of this approval letter and General Certification(s) and is responsible for complying with all conditions. [15A NCAC 02H .0507(d)(2)]

3. The designer or his designee shall supervise the installation of in-stream structures. [15A NCAC 02H .0506(b)(2)]

4. Natural fiber matting is recommended for streambank stabilization over plastic matting that can entrap small animals. [15A NCAC 02H .0506(b)(2)]

5. All mechanized equipment operated near surface waters or wetlands will be regularly inspected and maintained to prevent contamination of waters and wetlands from fuels, lubricants, hydraulic fluids or other potential toxic chemicals. In the event of a hydrocarbon or chemical spill, the permittee/contractor shall immediately contact the Division, between the hours of 8 am to 5 pm at the Asheville Regional Office at (828) 296-4500 and after hours and on weekends call (800) 858-0368. Management of such spills shall comply with provisions of the North Carolina Oil Pollution and Hazardous Substances Control Act. [15A NCAC 02H .0506 (b)(3) and (c)(3), 15A NCAC 02B .0200 (12), and GS 143 Article 21A]

6. All temporary impacted areas shall be restored to pre-construction natural conditions upon completion of the project. Native vegetation shall be used for stream bank stabilization. [15A NCAC 02H .0506 (b)(2) and (c)(2)]

7. Visual monitoring of the restoration project shall be conducted at a minimum of quarterly for the first year or two bankfull events (whichever is longer), and then annually until the site is stable (particularly after storm events) and vegetation is successful. Any failures of structures, stream banks, or vegetation may require future repairs or replacement, which requires coordination with the Asheville Regional Office to ensure the stability and water quality of the stream and downstream waters. [15A NCAC 02H .0506(b)(2) and (b)(3)]

This approval and its conditions are final and binding unless contested. [G.S. 143-215.5]

This Certification can be contested as provided in Articles 3 and 4 of General Statute 150B by filing a written petition for an administrative hearing to the Office of Administrative Hearings (hereby known as OAH) within sixty (60) calendar days.

A petition form may be obtained from the OAH at http://www.ncoah.com/ or by calling the OAH Clerk’s Office at (919) 431-3000 for information. A petition is considered filed when the original and one (1) copy along with any applicable OAH filing fee is received in the OAH during normal office hours (Monday through Friday between 8:00am and 5:00pm, excluding official state holidays).
The petition may be faxed to the OAH at (919) 431-3100, provided the original and one copy of the petition along with any applicable OAH filing fee is received by the OAH within five (5) business days following the faxed transmission.

Mailing address for the OAH:

If sending via US Postal Service:  If sending via delivery service (UPS, FedEx, etc):
Office of Administrative Hearings Office of Administrative Hearings
6714 Mail Service Center 1711 New Hope Church Road
Raleigh, NC 27699-6714 Raleigh, NC 27609-6285

One (1) copy of the petition must also be served to DENR:

Sam M. Hayes, General Counsel
Department of Environment and Natural Resources
1601 Mail Service Center
Raleigh, NC 27699-1601

This letter completes the review by the Division under section 401 of the Clean Water Act as described in 15A NCAC 02H .0500. Please contact Zan Price at (828) 296-4662 or zan.price@ncdenr.gov if you have any questions or concerns.

Sincerely,

G. Landon Davidson, P.G., Regional Supervisor
Water Quality Regional Operations
Asheville Regional Office

Enclosures:  GC 3885
-Certificate of Completion

cc:  Rachel Smith – Henderson County Conservation District (via email)
Jeff Young – NC Department of Agriculture and Consumer Services (via email)
David Brown – USACE Asheville Regulatory Field Office (via email)
Melissa King - Division of Energy, Mineral, and Land Resources (via email)
Andrea Leslie – NCWRC (via email)
DWR ARO 401 files
DWR 401 and Buffer Permitting Unit
GENERAL CERTIFICATION FOR STREAM RESTORATION, ENHANCEMENT AND STABILIZATION PROJECTS AND WETLAND AND RIPARIAN RESTORATION AND CREATION ACTIVITIES INCLUDING THOSE ELIGIBLE FOR U.S. ARMY CORPS OF ENGINEERS NATIONWIDE PERMIT NUMBERS 13 (BANK STABILIZATION) AND 27 (WETLAND AND RIPARIAN RESTORATION AND CREATION), AND REGIONAL PERMIT 197800080 (BULKHEADS AND RIPRAP) AND RIPARIAN AREA PROTECTION RULES (BUFFER RULES)

Water Quality Certification Number 3885 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 Regulations in 15A NCAC 02H .0500 and 15A NCAC 02B .0200 for the discharge of fill material to waters as described in 33 CFR 330 Appendix A (B) (13 and 27) and Regional Permit 197800080 and for the Riparian Area Protection Rules (Buffer Rules) in 15A NCAC 02B .0200.

The State of North Carolina certifies that the specified category of activity will not violate applicable portions of Sections 301, 302, 303, 306 and 307 of the Public Laws 92-500 and 95-217 if conducted in accordance with the conditions hereinafter set forth.

Activities meeting any one (1) of the following thresholds or circumstances require written approval for a 401 Water Quality Certification from the Division of Water Quality (the "Division"): 

a) All proposed fill or modification of wetlands and/or waters, including streams and streambanks, regardless of the purpose of the restoration, enhancement, stabilization, or creation activity, except for single and independent projects involving in-stream structures for the sole purpose of streambank stabilization, which are designed based on current natural channel techniques, and do not exceed a total of three structures within 100 feet or less of streambank; or

b) Any stream relocation; or

c) Bank Stabilization projects qualifying for Nationwide Permit 13 for erosion protection which utilize non-natural armoring such as riprap, gabion baskets, deflection walls etc of greater than 150 feet in streambank length; or

d) Bank Stabilization projects qualifying for Nationwide Permit 13 for erosion protection which utilize natural streambank sloping, vegetation, and other natural channel protection techniques of greater than 500 feet of streambank length; or

e) Any impact associated with a Notice of Violation or an enforcement action for violation(s) of DWQ Wetland Rules (15A NCAC 02H .0500), Isolated Wetland Rules (15A NCAC 02H .1300), DWQ Surface Water or Wetland Standards, or Riparian Buffer Rules (15A NCAC 02B .0200); or

f) Any impacts to streams and/or buffers in the Neuse, Tar-Pamlico, or Catawba River Basins or in the Randleman, Jordan or Goose Creek Watersheds (or any other basin or watershed with Riparian Area Protection Rules [Buffer Rules] in effect at the time of application) unless the activities are listed as “EXEMPT” from these rules or a Buffer Authorization Certificate is issued through N.C. Division of Coastal Management (DCM) delegation for “ALLOWABLE” activities.

In accordance with North Carolina General Statute 143-215.3D(e), written approval for a 401 Water Quality General Certification must include the appropriate fee. If a project also requires a CAMA Permit, then one payment to both agencies shall be submitted and will be the higher of the two fees.
Water Quality Certification No. 3885

Activities included in this General Certification that do not meet one of the thresholds listed above do not require written approval from the Division as long as they comply with the Conditions of Certification listed below. If any of these Conditions cannot be met, then written approval from the Division is required.

Conditions of Certification:

1. Activities shall meet the definitions, design, and monitoring protocols specified within the US Army Corps of Engineers Wilmington District Regulatory Guidance Letter (RGL02-02) and the Stream Mitigation Guidelines (April 2003) or any subsequent updates to these documents.

2. No Impacts Beyond those Authorized in the Written Approval or Beyond the Threshold of Use of this Certification

No waste, spoil, solids, or fill of any kind shall occur in wetlands, waters, or riparian areas beyond the footprint of the impacts depicted in the Pre-Construction Notification, as authorized in the written approval from the Division or beyond the thresholds established for use of this Certification without written authorization, including incidental impacts. All construction activities, including the design, installation, operation, and maintenance of sediment and erosion control Best Management Practices shall be performed so that no violations of state water quality standards, statutes, or rules occur. Approved plans and specifications for this project are incorporated by reference and are enforceable parts of this permit.


Erosion and sediment control practices must be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices and if applicable, comply with the specific conditions and requirements of the NPDES Construction Stormwater Permit issued to the site:

   a. Design, installation, operation, and maintenance of the sediment and erosion control measures must be such that they equal or exceed the requirements specified in the most recent version of the North Carolina Sediment and Erosion Control Manual. The devices shall be maintained on all construction sites, borrow sites, and waste pile (spoil) projects, including contractor-owned or leased borrow pits associated with the project.

   b. For borrow pit sites, the erosion and sediment control measures must be designed, installed, operated, and maintained in accordance with the most recent version of the North Carolina Surface Mining Manual.

   c. Reclamation measures and implementation must comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act and the Mining Act of 1971.

   d. Sufficient materials required for stabilization and/or repair of erosion control measures and stormwater routing and treatment shall be on site at all times.

   e. If the project occurs in waters or watersheds classified as Primary Nursery Areas (PNAs), SA, WS-I, WS-II, High Quality (HQW), or Outstanding Resource (ORW) waters, then the sedimentation and erosion control designs must comply with the requirements set forth in 15A NCAC 04B .0124, Design Standards in Sensitive Watersheds.
4. No Sediment and Erosion Control Measures in Wetlands or Waters

Sediment and erosion control measures shall not be placed in wetlands or waters. Exceptions to this condition require application submittal to and written approval by the Division. If placement of sediment and erosion control devices in wetlands and waters is unavoidable, then design and placement of temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands, stream beds, or banks, adjacent to or upstream and downstream of the above structures. All sediment and erosion control devices shall be removed and the natural grade restored within two (2) months of the date that the Division of Land Resources (DLR) or locally delegated program has released the specific area within the project.

5. Construction Stormwater Permit NCG010000

An NPDES Construction Stormwater Permit is required for construction projects that disturb one (1) or more acres of land. This Permit allows stormwater to be discharged during land disturbing construction activities as stipulated in the conditions of the permit. If your project is covered by this permit, full compliance with permit conditions including the erosion & sedimentation control plan, inspections and maintenance, self-monitoring, record keeping and reporting requirements is required. A copy of the general permit (NCG010000), inspection log sheets, and other information may be found at http://portal.ncdenr.org/web/wq/ws/su/npdesswflab-w .

The North Carolina Department of Transportation (NCDOT) shall be required to be in full compliance with the conditions related to construction activities within the most recent version of their individual NPDES (NCS000250) stormwater permit.

6. Construction Moratoriums and Coordination

If activities must occur during periods of high biological activity (i.e. sea turtle nesting, fish spawning, or bird nesting), then biological monitoring may be required at the request of other state or federal agencies and coordinated with these activities.

All moratoriums on construction activities established by the NC Wildlife Resources Commission (WRC), US Fish and Wildlife Service (USFWS), NC Division of Marine Fisheries (DMF), or National Marine Fisheries Service (NMFS) to lessen impacts on trout, anadromous fish, larval/post-larval fishes and crustaceans, or other aquatic species of concern shall be implemented. Exceptions to this condition require written approval by the resource agency responsible for the given moratorium.

Work within the twenty-five (25) designated trout counties or identified state or federal endangered or threatened species habitat shall be coordinated with the appropriate WRC, USFWS, NMFS, and/or DMF personnel.

7. Work in the Dry

All work in or adjacent to stream waters shall be conducted so that the flowing stream does not come in contact with the disturbed area. Approved best management practices from the most current version of the NC Sediment and Erosion Control Manual, or the NC DOT Construction and Maintenance Activities Manual, such as sandbags, rock berms, cofferdams, and other diversion structures shall be used to minimize excavation in flowing water. Exceptions to this condition require application submittal to and written approval by the Division.
8. Riparian Area Protection (Buffer) Rules

Activities located in the protected riparian areas (whether jurisdictional wetlands or not), within the Neuse, Tar-Pamlico, or Catawba River Basins or in the Randleman, Jordan, or Goose Creek Watersheds (or any other basin or watershed with buffer rules) shall be limited to “uses” identified within and constructed in accordance with 15A NCAC 02B .0233, .0259, .0243, .0250, .0267 and .0605, and shall be located, designed, constructed, and maintained to have minimal disturbance to protect water quality to the maximum extent practicable through the use of best management practices. All buffer rule requirements, including diffuse flow requirements, must be met.

9. If concrete is used during the construction, then all necessary measures shall be taken to prevent direct contact between uncured or curing concrete and waters of the state. Water that inadvertently contacts uncured concrete shall not be discharged to waters of the state due to the potential for elevated pH and possible aquatic life/ fish kills.

10. All temporary fill and culverts shall be removed and the impacted area returned to natural conditions within 60 days of the determination that the temporary impact is no longer necessary. The impacted areas shall be restored to original grade, including each stream’s original cross sectional dimensions, plan form pattern, and longitudinal bed and bed profile, and the various sites shall be stabilized with natural woody vegetation (except for the approved maintenance areas) and restored to prevent erosion.

11. All temporary pipes/ culverts/ riprap pads etc, shall be installed in all streams as outlined in the most recent edition of the North Carolina Sediment and Erosion Control Planning and Design Manual or the North Carolina Surface Mining Manual so as not to restrict stream flow or cause dis-equilibrium during use of this General Certification.

12. Any riprap required for proper culvert placement, stream stabilization, or restoration of temporarily disturbed areas shall be restricted to the area directly impacted by the approved construction activity. All rip-rap shall be buried and/or “keyed in” such that the original stream elevation and streambank contours are restored and maintained. Placement of rip-rap or other approved materials shall not result in de-stabilization of the stream bed or banks upstream or downstream of the area.

13. Any rip-rap used for stream stabilization shall be of a size and density so as not to be able to be carried off by wave, current action, or stream flows and consist of clean rock or masonry material free of debris or toxic pollutants. Rip-rap shall not be installed in the streambed except in specific areas required for velocity control and to ensure structural integrity of bank stabilization measures.

14. A one-time application of fertilizer to re-establish vegetation is allowed in disturbed areas including riparian buffers, but is restricted to no closer than 10 feet from top of bank of streams. Any fertilizer application must comply with all other Federal, State and Local regulations.

15. Applications for riprap groins proposed in accordance with 15A NCAC 07H .1401 (NC Division of Coastal Management General Permit for construction of Wooden and Riprap Groins in Estuarine and Public Trust Waters) must meet all the specific conditions for design and construction specified in 15A NCAC 07H .1405.
16. Compensatory Mitigation

In accordance with 15A NCAC 02H .0506 (h), compensatory mitigation may be required for losses of equal to or greater than 150 linear feet of streams (intermittent and perennial) and/or equal to or greater than one (1) acre of wetlands. For linear public transportation projects, impacts equal to or exceeding 150 linear feet per stream shall require mitigation.

Buffer mitigation may be required for any project with Buffer Rules in effect at the time of application for activities classified as "Allowable with Mitigation" or "Prohibited" within the Table of Uses.

A determination of buffer, wetland, and stream mitigation requirements shall be made for any General Water Quality Certification for this Nationwide and/or Regional General Permit. Design and monitoring protocols shall follow the US Army Corps of Engineers Wilmington District Stream Mitigation Guidelines (April 2003) or its subsequent updates. Compensatory mitigation plans shall be submitted to the Division for written approval as required in those protocols. The mitigation plan must be implemented and/or constructed before any impacts occur on site. Alternatively, the Division will accept payment into an in-lieu fee program or a mitigation bank. In these cases, proof of payment shall be provided to the Division before any impacts occur on site.

17. If an environmental document is required under the National or State Environmental Policy Act (NEPA or SEPA), then this General Certification is not valid until a Finding of No Significant Impact (FONSI) or Record of Decision (ROD) is issued by the State Clearinghouse.

18. In the twenty (20) coastal counties, the appropriate DWQ Regional Office must be contacted to determine if Coastal Stormwater Regulations will be required.

19. This General Certification does not relieve the applicant of the responsibility to obtain all other required Federal, State, or Local approvals.

20. The applicant/permittee and their authorized agents shall conduct all activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with §303(d) of the Clean Water Act), and any other appropriate requirements of State and Federal Law. If the Division determines that such standards or laws are not being met, including 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, then the Division may reevaluate and modify this General Water Quality Certification.

21. When written authorization is required for use of this certification, upon completion of all permitted impacts included within the approval and any subsequent modifications, the applicant shall be required to return the certificate of completion attached to the approval. One copy of the certificate shall be sent to the DWQ Central Office in Raleigh at 1650 Mail Service Center, Raleigh, NC, 27699-1650.

22. Additional site-specific conditions, including monitoring and/or modeling requirements, may be added to the written approval letter for projects proposed under this Water Quality Certification in order to ensure compliance with all applicable water quality and effluent standards.

23. This certification grants permission to the director, an authorized representative of the Director, or DENR staff, upon the presentation of proper credentials, to enter the property during normal business hours.
Water Quality Certification No. 3885

This General Certification shall expire on the same day as the expiration date of the corresponding Nationwide and/or Regional General Permit. The conditions in effect on the date of issuance of Certification for a specific project shall remain in effect for the life of the project, regardless of the expiration date of this Certification.

Non-compliance with or violation of the conditions herein set forth by a specific project may result in revocation of this General Certification for the project and may also result in criminal and/or civil penalties.

The Director of the North Carolina Division of Water Quality may require submission of a formal application for Individual Certification for any project in this category of activity if it is determined that the project is likely to have a significant adverse effect upon water quality, including state or federally listed endangered or threatened aquatic species, or degrade the waters so that existing uses of the wetland or downstream waters are precluded.

Public hearings may be held for specific applications or group of applications prior to a Certification decision if deemed in the public's best interest by the Director of the North Carolina Division of Water Quality.

Effective date: March 19, 2012

DIVISION OF WATER QUALITY
By

[Signature]

Charles Wakild, P.E.
Director

History Note: Water Quality Certification (WQC) Number 3885 issued March 19, 2012 replaces WQC Number 3689 issued November 1, 2007; WQC Number 3626 issued March, 2007; WQC Number 3495 issued December 31, 2004; and WQC Number 3399 issued March 2003. This General Certification is rescinded when the Corps of Engineers reauthorizes any of the corresponding Nationwide and/or Regional General Permits and/or when deemed appropriate by the Director of the Division of Water Quality.
DWR Project No.: ____________________ County: ________________________________

Applicant: ________________________________________________________________

Project Name: ___________________________________________________________

Date of Issuance of 401 Water Quality Certification: ____________________________

Certificate of Completion

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 and Buffer Permitting Unit, North Carolina Division of Water Resources, 1650 Mail Service Center, Raleigh, NC, 27699-1650. This form may be returned to DWR 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 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 be 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 Permitee 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 and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature: ____________________________ Registration No. ______________________

Date ________________________________