



NORTH CAROLINA
Environmental Quality

ROY COOPER

Governor

MICHAEL S. REGAN

Secretary

S. DANIEL SMITH

Director

November 25, 2020

DWR # 2002-0158v3
Brunswick County

Scott McLendon, Chief
Regulatory Division, Wilmington District
US Army Corps of Engineers
69 Darlington Avenue
Wilmington NC 28403-1343

Subject: REQUEST FOR ADDITIONAL REVIEW TIME
Town of Sunset Beach Navigation Project, Maintenance Dredging of South Jinks
Creek, the Bay Area & the Feeder Channel, Nearshore Placement

Dear Chief McLendon,

On October 2, 2020, the Division of Water Resources ("DWR") received a CAMA Major Permit Application requesting for a 401 Water Quality Certification for the referenced project that may result in a discharge to the Waters of the United States. The project was public noticed by the Army Corps of Engineers on October 19, 2020.

On Friday, September 11, 2020, the Environmental Protection Agency's "Clean Water Act Section 401 Certification Rule" ("Federal Rule") became effective. This rule at 40 C.F.R. Section 121.6(c), outlines factor which the Federal agency shall consider in establishing the reasonable period of time for the processing of 401 Water Quality Certifications requests. To date, the Division has not received a written notice regarding the applicable reasonable period of time to act on the certification request as outlined in 40 C.F.R. Section 121.6(b). Therefore, to avoid any confusion and pursuant to this new Federal Rule, DWR hereby requests your written concurrence that a reasonable period of time for DWR to act on this Certification Request for is **six months**.

In support of this request we direct your attention to the following considerations:

1. The complexity of the proposed project.

The project is uniquely complex in that it proposes nearshore material placement. Nearshore and intertidal material placement is not usually considered a preferred alternative due to other feasible alternatives that would result in less water quality impacts. According to the applicant, this alternative was selected due to possible property rights issues of placing material on the beachfront and to comply with state coastal management law. This limitation on alternatives and this non-traditional project design needs additional time to investigate.



2. The potential need for additional study or evaluation of water quality effects from the discharge.


The Corps public notice served to satisfy the Division's public notice requirement pursuant to state rules. The comment period closed November 19, 2020. The Division needs additional time to review the comments received on the project, specifically the resource agency comments and recommendations.

DWR believes these criteria justify a determination by the Corps that six months is a reasonable period of time for the DWR to act upon the application.

By making this request, DWR does not waive its right to determine upon further review of the Certification Request that additional information and/or additional time is necessary to process the application. DWR further does not waive its right to object to or contest the legality of any of the provisions set forth in Federal Rule any actions taken by the Corps pursuant to it, whether related to this Certification Request or any other projects over which the State has jurisdiction pursuant to Section 401 of the Clean Water Act.

Thank you for your consideration of this time-sensitive matter. Please contact Robb Mairs at (910) 796-7303 or Robb.Mairs@ncdenr.gov with any questions.

Sincerely,

DocuSigned by:

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Morella Sanchez King, Regional Supervisor
Water Quality Regional Operations Section
Wilmington Regional Office
Division of Water Resources, NCDEQ

cc: Greg Currey, Wilmington District, ACOE-Electronic Copy
Robert Neal, Moffatt and Nichol-Electronic Copy
Curt Weychert, NC Division of Coastal Management, Morehead City Office-Electronic Copy
DWR 401 & Buffer Permitting Unit