

APPENDIX G CONCURRENCE FORMS

- Concurrence Point No. 3 – Identification of the Least Environmentally Damaging Practicable Alternative (LEDPA)
- Concurrence Point No. 4a – Avoidance and Minimization
- USEPA email regarding CP 3 and CP 4a dated July 1, 2010

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Section 404/NEPA Merger Team Meeting Agreement
Concurrence Point No. 3 –
Identification of the Least Environmentally Damaging
Practicable Alternative (LEDPA)

Project No./TIP No./Name/Description:

Federal Project Number: STP-1213(6); State Project Number 8.2812501;

TIP Number: U-3321

Description: Gaston East-West Connector in Gaston and Mecklenburg Counties

Least Environmentally Damaging Practicable Alternative:

Following review of the Detailed Study Alternatives (DSAs) presented in the Draft Environmental Impact Statement, the Section 404/NEPA Merger Project Team has concluded that DSA 9 is the Least Environmentally Damaging Practicable Alternative, contingent upon the Metrolina Region successfully demonstrating air quality conformity in compliance with the Clean Air Act. DSA 9 was identified as the LEDPA based on documentation from the Turnpike Environmental Agency Coordination (TEAC) meeting held on October 13, 2009 (see attached minutes). Additional discussions were held at TEAC meetings on August 12, 2009 and September 8, 2009.

The Project Team concurred on this date of 10/13/09 that DSA 9 is the Least Environmentally Damaging and Practicable Alternative for the Gaston East-West Connector project.

USACE Steven W. Lumpf

NCDOT Kristina L. Selby

SEE MEMO 8/31/09

USEPA _____

USFWS Malcolm Smith

NCDWQ B. L. [Signature]

NCWRC Marla Chambers

NCDCR Renee Medhill-Early

FHWA Jay Horn

GUAMPO James Yohani

MUMPO Robert M. Cook

NCTA Jennifer Harris

SECTION 404/NEPA MERGER 01 ISSUE BRIEF: Special Circumstances for Non-concurrence

Date: August 31, 2009

Submitted by: Christopher A. Militscher, REM, CHMM
Merger Team Representative
USEPA Raleigh Office

THRU: Heinz J. Mueller, Chief
NEPA Program Office
USEPA Region 4

Thomas C. Welborn, Chief
Wetlands, Coastal Protection Branch
USEPA Region 4

CC: Kathy Matthews, EPA Wetlands Section

To: Jennifer Harris, P.E., Project Manager
NCDOT/North Carolina Turnpike Authority

Merger 01 Team Representatives

1. Project Name and Brief Description: Gaston East-West Connector, From I-85 to I-485, Mecklenburg and Gaston Counties; 22-mile new location toll facility (U-3321).

2. Last Concurrence Point: CP 2A Bridging and Alignment Review
Date of Concurrence: 10/7/08

3. Proposal and Position: NCTA proposes to select DSA 9 as the LEDPA. Generally, EPA does not believe that the LEDPA is 'ripe for concurrence' until the Metrolina area air quality ozone issues are resolved first and avoidance and minimization can be demonstrated for Section 303(d) listed impaired waters.

4. Reasons for Non-concurrence: The Merger 01 Roles and Responsibilities (Revised 5/2/06 – Page 6) describe the decision-making philosophy under the NEPA/Section 404 Merger 01 Process. Concurrence is not legally defined but could be understood as being potentially 'pre-decisional' on the part of EPA employees. The requirements of the Administrative Procedures Act of 1946 must also be considered. The NEPA/Section 404 Merger 01 Process does not address compliance or requirements under the Clean Air Act. Non-concurrence is described, as "I do not concur as the information is not adequate for this stage and/or concurrence could violate the laws and regulations of my program and agency". Please refer to EPA's letter dated July 17, 2009, on the review of the Draft Environmental Impact Statement and our environmental objections concerning the compliance with the Clean Air Act NAAQS and Clean Water Act Section 404(b)(1)

Guidelines. It is our understanding that the Federal Highway Administration cannot issue a Record of Decision (ROD) until such time as the SIP and transportation conformity issues are resolved.

5. Potentially Violated Laws/Regulations: Sections 172 and 182 of the Clean Air Act and Section 404(b)(1) of the Clean Water Act.

6. Alternative Course of Action: EPA Merger team representatives will continue to work with NCTA, FHWA and other Merger team agencies on environmental issues associated with the proposed project. However, EPA representatives cannot provide written concurrence until such time as the Clean Air Act compliance issues are resolved and Section 404(b)(1) Guidelines on the avoidance and minimization of jurisdictional wetland and stream impacts can be demonstrated.

Section 404/NEPA Merger Team Meeting Agreement
Concurrence Point No. 4a –
Avoidance and Minimization

Project No./TIP No./Name/Description:

Federal Project Number: STP-1213(6); State Project Number 8.2812501;

TIP Number: U-3321

Description: Gaston East-West Connector in Gaston and Mecklenburg Counties

Avoidance and Minimization:

The purpose of Concurrence Point 4a is to identify additional avoidance and minimization efforts not included in the preliminary design during the alternative analysis phase of the project. Following a review of the preliminary design changes since the Draft Environmental Impact Statement, the Section 404/NEPA Merger Project Team has concluded that project jurisdictional impacts have been avoided and minimized to the maximum extent practicable based on current information and design available at the time. Need to review Service Roads #1 and #9 for additional refinements.

Avoidance and Minimization efforts were reviewed and accepted by the NEPA/404 Merger Team, based on documentation from the Turnpike Environmental Agency Coordination (TEAC) meeting held on February 16, 2010.

The Project Team concurred on this date of 2.16.2010 with CP 4a (Avoidance and Minimization).

USACE *J. D. [Signature]*

NCDOT *Kristina [Signature]*

USEPA ^{2/16/10} *[Signature]* SEG INCLUDED MEMO - "CONDITIONAL"

USFWS *[Signature]* 2/16/2010

NCDWQ *[Signature]*

NCWRC *[Signature]* 2/16/2010

NCDCR *[Signature]*

FHWA *[Signature]* 2/16/2010

GUAMPO *[Signature]*

MUMPO *[Signature]*

NCTA *[Signature]*

From: Militscher.Chris@epamail.epa.gov [mailto:Militscher.Chris@epamail.epa.gov]

Sent: Thursday, July 01, 2010 8:19 AM

To: Harris, Jennifer

Cc: Dayton, Jeff; Harris, Jennifer; 'George.Hoops@dot.gov'; jsgurak,; sarah.e.hair@usace.army.mil; Lespinasse, Polly; marella_buncick@fws.gov; Chambers, Marla J; Gledhill-earley, Renee

Subject: Re: Gaston East-West Connector

Jennifer: I abstain on CP 3 and 4A. I understand that all of the other Merger team members have potentially concurred. Air conformity & NCSIP issues have been resolved with EPA's Air Programs in Atlanta.

However, EPA continues to have substantial environmental concerns regarding the ability to provide adequate compensatory mitigation for jurisdictional impacts to waters of the U.S. EPA has not yet received a conceptual mitigation plan as requested. As you may be aware, NCDWQ as of October 2009 requires mitigation for all intermittent streams as well.

I appreciate that some avoidance and minimization on the Preferred Alternative has been accomplished which is the primary reason why I conditionally concurred. However, I continue to have environmental concerns regarding the selection of the LEDPA. Please refer to EPA's comment letter on DEIS for further information. EPA does not believe that pursuing an elevation to the MMT or Review Board is appropriate at this time.

I plan to continue to stay an active participant in the Merger process for this proposed project. Thank you.

Christopher A. Militscher, REM, CHMM
USEPA Raleigh Office
Merger Team Representative
919-856-4206

-----"Harris, Jennifer" <jennifer.harris@ncturnpike.org> wrote: -----

To: Chris Militscher/R4/USEPA/US@EPA
From: "Harris, Jennifer" <jennifer.harris@ncturnpike.org>
Date: 06/30/2010 09:08AM
cc: "Dayton, Jeff" <jeff.dayton@ncturnpike.org>, "Harris, Jennifer" <jennifer.harris@ncturnpike.org>, "George.Hoops@dot.gov" <George.Hoops@dot.gov>, "jsgurak," <jsgurak@pbsj.com>, "Harris, Jennifer" <jennifer.harris@ncturnpike.org>
Subject: Gaston East-West Connector

Chris,

We are finalizing the Final EIS for the subject project.

You provided a letter dated August 31, 2009 indicating special circumstances for non-concurrence related to CP 3. The reasons were that the Metrolina region conformity determination had not been completed and we had not yet demonstrated avoidance and minimization to jurisdictional wetlands and streams.

First question - would this be an "abstain" circumstance? Or were we supposed to elevate this issue since it is a "non-concurrence"? The letter does not say "abstain" but we interpreted it that way, and want to confirm that is the correct interpretation.

Second question - now that the Metrolina region has demonstrated conformity and we have 4A, does that mean that EPA concurs or could concur with CP 3?

Third question - Your concurrence for 4A also referenced the August memo, because the Metrolina conformity determination had not yet been completed at that time. Now that it has, does that mean the "conditional" concurrence can be an actual "concurrence"?

As you can see, we want to make sure we are dotting the i's and crossing the t's.

Thank you in advance for your prompt response.

Jennifer

Jennifer H. Harris, P.E.
North Carolina Turnpike Authority
5400 Glenwood Avenue, Suite 400
Raleigh, North Carolina 27612
Tel (919) 571-3000
Dir (919) 571-3004
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----- Message from "Militscher.Chris@epamail.epa.gov"
<Militscher.Chris@epamail.epa.gov> on Thu, 1 Apr 2010 15:25:40 -0400 -----

To: "Dayton, Jeff" <jeff.dayton@ncturnpike.org>

cc: "Harris, Jennifer" <jennifer.harris@ncturnpike.org>,
"George.Hoops@dot.gov" <George.Hoops@dot.gov>

Subject: Re: CP 4a Documentation

Jeff: Yes. The memo being referred to on the CP 4A form is the EPA's 8/28/09 special circumstances for non-concurrence brief on the LEDPA.

We concur that you have clearly demonstrated some Section 404 avoidance and minimization to waters of the U.S. However, we continue to have 'reservations' concerning the air quality issues and the proposed mitigation for the selected/preferred alternative. Thank you.

-----"Dayton, Jeff" <jeff.dayton@ncturnpike.org> wrote: -----

To: Chris Militscher/R4/USEPA/US@EPA

From: "Dayton, Jeff" <jeff.dayton@ncturnpike.org>

Date: 04/01/2010 03:01PM

cc: "Harris, Jennifer" <jennifer.harris@ncturnpike.org>, "George.Hoops@dot.gov" <George.Hoops@dot.gov>

Subject: CP 4a Documentation

Chris,

We are beginning the preparations for the Final EIS and did have one question for you. Is the briefing memo from USEPA for Concurrence Point 3 (attached as *CP3Signed101309&GastonSpecCirc.pdf*) also being referred to as "memo" on USEPA's signature line in Concurrence Point 4a (attached as *CP 4a signed 021610.pdf*)?

If not, could you provide us the additional documentation/memo for Concurrence Point 4a?

Thanks again-

Jeff Dayton, P.E.

Transportation Engineer

NCTA General Engineering Consultant

5400 Glenwood Avenue, Suite 400

Raleigh,