RECORD OF DECISION

U.S. Department of Transportation
Federal Highway Administration

Smith Creek Parkway
from 3rd Street to Kornegay Avenue
New Hanover County, North Carolina

Federal Aid Project No. MAM-M-5851 (2)
State Project No. 8.2250101, TIP No. U-92(A) and (B)
FHWA-NC-EIS-77-03-FS

I. Decision

This Record of Decision (ROD), pursuant to Federal regulations 40 CFR 1505.2 and 23 CFR 771.127, is prepared for the proposed Smith Creek Parkway with 3rd Street Extension in the City of Wilmington, New Hanover County, North Carolina. Once complete, Smith Creek Parkway, a four- to six-lane, divided roadway, would extend approximately six miles from NC 113 at the Northeast Cape Fear River to US 74, east of Wilmington.

In 1980, a Final Environmental Impact Statement (EIS) and Section 4(f) statement for the Smith Creek Parkway and Downtown Spur were approved with the original preferred alternative. Subsequent to the 1980 Final EIS, a Supplemental EIS was completed. The 1991 FSEIS re-evaluated the environmental impacts of the preferred alternative due to developments within the preferred corridor. As a result, the Supplemental EIS identified a new preferred alternative which included sections of the 1980 Final EIS preferred alternative. Subsequent to the 1991 Final Supplemental EIS, however, supplementary information and analysis of changed conditions occurring or discovered since both the 1980 Smith Creek Parkway and Downtown Spur Final Environmental Impact Statement (EIS) and the 1991 Final Supplemental EIS required the re-evaluation of alignment alternatives between 3rd Street and Kornegay Avenue, the western portion of the proposed improvement. This re-evaluation culminated in the publication of the 1998 FSEIS. The 1998 FSEIS also served to augment the information provided in the 1991 FSEIS as needed to satisfy the requirements of current state and federal regulations for the preparation of environmental impact statements. The Supplemental EIS preferred alternative which is covered by this Record of Decision consists of a four lane, divided roadway with full control of access from 3rd Street to Kornegay Avenue, east of 23rd Street, located primarily along the north side of Smith Creek. The remainder of Smith Creek Parkway, projects TIP No. U-92(C) and (D), is a six-lane divided roadway with limited control of access.

In addition to addressing these changed conditions, the currently proposed action was also developed to address concerns regarding noise impacts to several local businesses and to
reduce the potential hazardous material impacts associated with crossing the Burnt Mill Creek Landfill.

The overall purpose of this project is to increase east-west traffic carrying capacity, to alleviate traffic demands along Market Street through downtown Wilmington, to improve motorists' safety within the study area, and to address system transportation needs. More specifically, the construction of the proposed alternative will result in the following:

- Improved roadway safety, decreased congestion, and improved air quality along Market Street due to an approximately 25% reduction in the daily traffic volume within the corridor.
- A substantial diversion of traffic from Market Street thus improving the ambiance of the Wilmington National Register Historic District.
- Decreased travel times for east-west travelers through continuation of the proposed route between US 74 (Eastwood Road) and Downtown Wilmington begun by Smith Creek Parkway TIP Sections U-92C and U-92D.

II. Alternatives Considered

In terms of the portion of Smith Creek Parkway west of Kornegay Avenue, two build alternatives were considered for detailed study. In accordance with the National Environmental Policy Act of 1970 (42 U.S.C. 4321 et seq.), the two build alternatives and the no-build alternative were investigated in terms of potential impacts on both the human and natural environment. The build alternatives include the 1991 FSEIS Preferred Design Alternative and the Northern Design Alternative with 3rd Street Extension (hereinafter referred to as the Northern Design Alternative). The No-Build Alternative, rejected in the 1991 FSEIS, and the 1991 FSEIS Preferred Design Alternative (Sections U-92A and U-92B) were determined not to meet the purpose and need for this project. As a result, the 1998 FSEIS identified the Northern Design Alternative as the Preferred Design Alternative, which has been refined over what was presented in the 1996 DSEIS to include more extensive bridging and an additional interchange at McRae Street.

A. Basis for Selection of the Preferred Design Alternative

The Northern Design Alternative was selected as the Preferred Design Alternative for the following reasons:

- the alternative provides full control of access from the Creekwood North subdivision to North Front Street with all roadways and railroads grade-separated;
- avoids hazardous material involvement, unknown cleanup costs, and water supply concerns associated with the Burnt Mill Creek Landfill;
- less noise conflicts with the Carolco Film Studios and other land uses;
- less historic impacts;
- preserves the downtown rail spur corridor for future use;
- results in less wetland impacts.
B. Description of the Preferred Design Alternative

The Preferred Alternative (Northern Design Alternative) is a 2.8 mile four-lane divided facility with a 30 foot median on new location that begins at the terminus of TIP Project U-92C near 23rd Street and extends to the Northeast Cape Fear River and Downtown Wilmington.

This alternative involves completing the Smith Creek Parkway by constructing a four-lane facility with full control of access linking downtown Wilmington to the six-lane facility associated with TIP Project U-92C to the east. Beginning at the terminus of TIP Project U-92C, near the Creekwood North subdivision, this alternative crosses to the north side of Smith Creek at 23rd Street. Beyond the partial cloverleaf interchange at 23rd Street, the alternative extends over the CSX railroad and intersects a realigned US 117 forming a three-legged interchange. Beyond US 117, the alignment turns to the south and crosses Smith Creek again. The alternative then intersects McRae Street, where a half diamond interchange is proposed to provide access from properties along US 117 (Castle Hayne Road) south of Smith Creek to Downtown Wilmington. West of McRae Street, the preferred alternative continues towards Downtown Wilmington terminating with the extension of 3rd Street, just south of the partially grade separated intersection with the Northeast Cape Fear River Bridge.

Proposed Interchange Locations
- 23rd Street
- Realigned US 117
- McRae Street

Proposed Grade Separation Locations
- CSX Railroad west of 23rd Street
- CSX Railroad Spurs west of McRae Street
- Northeast Cape Fear River Bridge

The Preferred Alternative (Northern Design Alternative) is the environmentally preferred alternative for this section of the Smith Creek Parkway.

C. Roadway Cost Estimate

The estimated cost for the Preferred Design Alternative is roughly twice that of the 1991 FSEIS Preferred Design Alternative [$137M vs. $74.1M]. Although the Preferred Alternative would appear to be most expensive, this alternative avoids the unknown impacts and cost of cleaning up the Burnt Creek Landfill, in addition to the higher user costs of an at-grade facility. The Preferred Design Alternative also includes more extensive bridging to reduce wetland impacts and to better facilitate anadromous fish spawning migrations. Table 1 summarizes the construction and right-of-way costs associated with the Preferred Alternative.
Table 1: Roadway Cost Estimate for Northern Design Alternative
(Preferred Design Alternative)

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<th>Cost 1</th>
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<tr>
<td>Construction</td>
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<td>Total</td>
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1 Costs are reported in 1997 dollars

D. Impacts
The selection of the Preferred Design Alternative included a thorough assessment of social and environmental impacts for the build alternatives under consideration. To a certain degree, the findings associated with this Record of Decision (ROD) and addressed in the 1998 Final Supplemental Environmental Impact Statement (FSEIS) build upon the findings of the 1980 Final Environmental Impact Statement (FEIS) and the 1991 Final Supplemental Environmental Impact Statement (FSEIS). The impacts associated with the two build alternatives are addressed individually below. In the interest of brevity, the sections below only address those areas where substantial differences in impacts between the alternatives are anticipated. Those areas where the impacts are essentially the same are described in the 1998 Final Supplemental Environmental Impact Statement (FSEIS).

Relocation Impacts
No residents are anticipated to require relocation due to the construction of either the Northern Design Alternative (Preferred Design Alternative) or the 1991 FSEIS Preferred Design Alternative. The Northern Design Alternative (Preferred Design Alternative) would cause the relocation of ten businesses whereas the 1991 FSEIS Preferred Design Alternative would cause the relocation of only four businesses.

Cultural Resource Impacts
The Northern Design Alternative (Preferred Design Alternative) would include improvements to 3rd Street which would extend south for approximately three blocks into the proposed expansion of the Wilmington National Register Historic District. All on-street parking would be eliminated between Hanover and Harnett Streets. No roadway widening, additional right-of-way, or relocations would be required as a result of this construction.

Air quality and noise impacts to the surrounding district area may result during construction and later from increased traffic. Since the portion of the existing historic district along 3rd Street is only considered significant archaeologically according to its National Register nomination, there would be no historic architecture visual impacts along 3rd Street as a result of the proposed action.
The Northern Design Alternative (Preferred Design Alternative) extends along the northern and western boundaries of the proposed expansion area of the Wilmington National Register Historic District. There are two major impacts to the historical resources within this expansion area. First, North 4th Street would no longer connect to Castle Hayne Road, and the North 4th Street bridge (New Hanover Bridge No. 20) would require removal. This would reduce access to the North 4th Street area (north of Davis Street), thereby reducing traffic and noise levels which would be positive impacts. Second, Cowan Street would be terminated on the northeast side of Davis Street, thus preventing through access from 4th Street to 3rd Street along Cowan. This modification would also reduce traffic as well as noise levels on Cowan Street. Traffic volumes on Davis Street would increase; therefore, Davis Street, as it approaches 3rd Street, would be widened on its southern side (outside the expanded district).

Indirect visual impacts may be caused by construction and increased traffic through the expanded historic district. Eliminating access to Cowan Street via 3rd Street would reduce visual impacts to the residential atmosphere. Conversely, the visual impacts in the residential sections of Davis Street would be adverse due to the projected higher traffic volumes. Adverse visual impacts to the Robert Taylor Homes are also a possibility due to the proposed Smith Creek Parkway bridge over the CSX Railroad and its associated roadway lighting and signing.

The 1991 FSEIS Preferred Design Alternative would require 9 acres, all within existing railroad right-of-way, of the Wilmington National Register Historic District, which is more than 1,300 acres. The 1991 FSEIS Preferred Design Alternative would displace two businesses located within the historic district. These businesses are "not specifically involved with the function or maintenance of the Wilmington Historic District" (1980 FEIS). The downtown spur corridor, as part of the 1991 FSEIS Preferred Design Alternative, bisects the historic district and would therefore result in more negative impacts within the historic district.

As a result of the impacts of the build alternatives on the Wilmington National Register Historic District and the proposed northern expansion of this property a Section 4(f) evaluation was completed.

Noise Impacts
Projected Year 2020 peak hour traffic volumes were utilized to evaluate noise levels for both design alternatives. This data was used to project future year noise levels and to assess the feasibility of noise abatement measures for locations projected to experience a traffic noise impact.

The results of this effort suggest that the Northern Design Alternative (Preferred Design Alternative) would result in substantially less noise impacts for the Carolco Film Studios since it is located further away from this facility than the 1991 FSEIS Preferred Design Alternative. No substantial noise impacts were identified for
any other sites located west of 23rd Street for the Northern Design Alternative (Preferred Design Alternative).

**Water Resources**
In addition to the bridge connection with the Northeast Cape Fear Bridge at the western project terminus, the Northern Design Alternative (Preferred Design Alternative) would require four creek/stream crossings. The 1991 FSEIS Preferred Design Alternative would require only three crossings, one of which is located near an existing bridge on Castle Hayne Road.

Short term water quality impacts during construction would be potentially greater from the Northern Design Alternative (Preferred Design Alternative) due to its requiring one additional creek/stream crossing, greater involvement within the 100-year flood plain, and greater wetland impacts. Since these would be temporary impacts, they were not considered as critical as other reoccurring impacts such as stormwater run-off and associated flooding.

The Northern Design Alternative (Preferred Design Alternative) has a greater area within the 100-year floodplain due to its alignment closer to Smith Creek and that it crosses Smith Creek on new alignment at two locations. The 1991 FSEIS Preferred Design Alternative would cross Smith Creek at only one location and this crossing would be on new alignment as well.

**Wetlands**
The Northern Design Alternative (Preferred Design Alternative) will impact less acres of wetlands (5.22 vs. 6.97 acres, measured by the same methods) than the 1991 FSEIS Preferred Design Alternative. The potential wetland impacts of the Northern Design Alternative (Preferred Design Alternative) were reduced by approximately nine acres from the original alternative by reducing the number of lanes from six to four and by increasing the number and lengths of bridges over wetland areas. The Northern Design Alternative (Preferred Design Alternative) corridor has been located along the route which links with the prescribed eastern and western termini, while impacting the least amount of wetlands of any route extending north of Smith Creek. A majority of the wetland impacts associated with this alternative are a result of the closeness of the alignment to the creek, floodplain, and secondary drainages. Existing wetlands in the area have been greatly reduced due to past legal dumping and filling.
Wildlife and Fisheries
The Northern Design Alternative (Preferred Design Alternative) will have slightly
greater impacts on wildlife and fisheries than the 1991 FSEIS Preferred Design
Alternative, due to its greater impact on wooded and floodplain areas. However, the
additional stream crossings would not add to habitat fragmentation due to crossings
occurring in previously disturbed areas or at points of previous fragmentation.

Protected Species
The Section 7 Consultation for the Shortnose Sturgeon (Acipenser brevisitorum)
initiated for Smith Creek Parkway segments U-92C and U-92D with the National
Marine Fisheries Service (NMFS), was continued for segments U-92A and U-92B.
Due to insufficient data, it was assumed that the sturgeon and/or sturgeon habitat is
present in the study area. The most critical area for potential impacts is the in the water
location where Smith Creek Parkway links with the Northeast Cape Fear River Bridge.
Based on the Biological Assessment (BA) performed for this study, the NMFS concurs
that the actual presence of the sturgeon for breeding in Smith Creek itself may be
unlikely due to their need for fresher water, which is available further upstream on the
Cape Fear River system. Furthermore, the proposed project is likely to not have an
adverse effect on the Shortnose Sturgeon or any other Federally-listed protected
species under NMFS purview, provided that there is a moratorium between February 1
and May 31 on in water construction if driven piles are used. If drilled piers are used,
there is not likely to be an adverse effect and no in-water construction moratorium is
required.

Historic occurrences of Manatee (Trichechus manatus) have been reported in the Cape
Fear River as recent as the late summer of 1994. Based on the BA performed for this
study, the U.S. Fish and Wildlife Service (USFWS) concurs that the project is not
likely to adversely affect the Manatee or any other Federally-listed protected species
under USFWS purview. However, the USFWS expects that NCDOT will implement
Manatee Construction Precautions and work in water will be suspended if Manatee are
present in the work area.

Protected species surveys were conducted for Federally-listed species, Rough-leaved
loosestrife (Lysimachia asperulaefolia) and Cooley’s Meadowrue (Thalictrum cooleyti)
on July 27, 1997 by NCDOT biologists, Logan Williams, Teryn Smith and Hal Bain.
No Rough-leaved loosestrife or Cooley’s Meadowrue were found during the
investigation of the U-92 A & B corridors. None of the other Federally-listed
threatened and endangered plant or animal species thought to inhabit New Hanover
County, are known to occur, are reported to have been found, or have habitat within
the study areas of either design alternative. None of these species or habitat were
observed during the field biotic surveys for this project. However, due to the transient
and seasonal migration habits of some of these listed threatened and endangered
species, it is possible that an individual could migrate into the project area at some time
in the future. Based on the BA performed for this study, the U.S. Fish and Wildlife
Service (USFWS) concurs that the project will have no effect on Rough-leaved loosestrife or Cooley's meadow rue.

**Potentially Hazardous Material Sites**

Based on the hazardous material reconnaissance survey (Hazardous Materials Evaluation, 1995), a site assessment survey (Preliminary Environmental Site Assessments, 1996), and a Phase II Site Assessment (1996) performed within the Northern Design Alternative (Preferred Design Alternative) corridor, no impacts are expected at 11 sites; possible impacts to 9 sites are expected to be minimal; impacts to 2 other sites could range from Minimal to Moderate; and impacts to 2 additional sites could range from Moderate to High. The impacted sites are predominantly the result of underground storage tanks (USTs) or landfill debris. Clean-ups may be required on other sites. None of the identified sites are thought to pose a serious threat to the project or substantially alter the alignment of the Northern Design Alternative (Preferred Design Alternative). Furthermore, none of the sites appear to be economically infeasible to clean up per the requirements of NC DEHNR or US EPA. It should be noted that the hazardous material impacts anticipated from the Northern Design Alternative (Preferred Design Alternative) would be much less than the 1991 FSEIS Preferred Design Alternative.

**Displaced Government Facilities**

The 1991 FSEIS Preferred Design Alternative would not displace any government-owned facilities. The Northern Design Alternative (Preferred Design Alternative) would displace state-, county- and city-owned facilities. The NCDOT Division 3 Maintenance Facility on Division Drive will be displaced. The county facility is the Sheriff's Department Target and Bomb Disposal Ranges. The city facility is a recyclable waste collection and composting operation. The county and city facilities are specialized and mandated facilities which should be relocated without serious problems.

**Impacts to Minority and Low Income Groups**

The Creekwood North, Brooklyn Assembly (including Robert Taylor Homes), and Love Grove neighborhoods are predominately occupied by minority, low income residents. No non-minority neighborhoods are involved with this phase (U-92A and U-92B) of the Smith Creek Parkway project. No residential relocations of or other direct impacts to minority or low income residents are anticipated for either alternative and access to these neighborhoods will not be disrupted. The proposed landscaping along Smith Creek Parkway and 4th Street, which is proposed to mitigate the visual impacts of the proposed action, would enhance the aesthetics of this area. The reduction of traffic on North 4th Street, north of Davis Street, in the vicinity of the Robert Taylor Homes would reduce traffic related noise and enhance the residential character of this neighborhood. No minority owned businesses will require relocation by either alternative.
Impacts to North Carolina Bicycle Highways
The proposed action, the Northern Design Alternative (Preferred Design Alternative) would cause a North Carolina Bicycle Highway to be re-routed approximately 4 miles through downtown Wilmington for an approximate additional one-half mile in total distance.

III. Section 4(f) Statement

As a result of the impact of the build alternatives on the Wilmington National Register Historic District and the 14 block area immediately north of the Historic District eligible for the National Register of Historic Places, a Section 4(f) statement was prepared and incorporated into the 1998 Final Supplemental Environmental Impact Statement (FSEIS). This report documents the history of the Section 4(f) property, summarizes the current state of this resource, and examines the impact of each of the build alternatives on the Section 4(f) property. The report also examines the merits of several avoidance alternatives including termination of the proposed Smith Creek Parkway from the east at 23rd Street or the elimination of the proposed widening of 3rd Street, Davis Street, and 4th Street associated with the Northern Design Alternative (Preferred Design Alternative). It is concluded, however, that there is no feasible and prudent alternative to the use of the Section 4(f) land.

Based on coordination with the State Historic Preservation Office (SHPO), the Northern Design Alternative (Preferred Design Alternative) was determined to have an ADVERSE EFFECT on the existing historic district and its northern expansion. With this in mind, the Section 4(f) statement outlines measures to minimize harm to the Section 4(f) property. A collaborative effort between the NCDOT, SHPO, FHWA, and the City of Wilmington to identify minimization measures was formalized in a Memorandum of Agreement (MOA). This MOA, which accompanies the 1998 Final Supplemental Environmental Impact Statement (FSEIS), stipulates measures to be undertaken with the proposed action to take into account the effect of the Preferred Design Alternative on the Section 4(f) property. The provisions of the Historic Preservation Act (36 CFR 800) have been fulfilled for the proposed action.

IV. Measures to Minimize Harm

All practical measures to minimize environmental harm have been incorporated into the decision. The North Carolina Department of Transportation makes the following commitments with respect to the avoidance or minimization of major impacts during design, construction and maintenance of this proposed project.
Floodplains
Development of preliminary designs will include coordination with state and federal agencies (FEMA) to ensure project consistency with applicable floodplain policies and regulations. Appropriate design criteria and strict management practices will result in no substantial impacts to floodplains from the Northern Design Alternative (Preferred Design Alternative).

Hazardous Wastes
The removal of underground storage tanks (USTs) may be required at seven sites. Remediation measures may be required at one of the above UST sites and six additional contaminated sites.

If any other hazardous waste sites or unrecorded underground storage tanks are discovered during the construction phase of the project, these sites will be assessed and remediated in compliance with the Environmental Protection Agency; the North Carolina Department of Environment, Health and Natural Resources; and local policies regarding cleanup procedures prior to continuation of construction.

Noise
During the final design phase of this project, a design noise report will present a more detailed analysis of the impacts and possible additional noise abatement measures. However, at this time no noise abatement measures are warranted based on the analysis conducted as part of the SEIS.

Protected Species
Mitigation for potential impacts to the Shortnose Sturgeon will consist of use of NCDOT Best Management Practices (BMPs) with regard to in-water construction. If driven piles are used, there will be a moratorium on in water construction between February 1 and May 31, no moratorium if drilled piers are used.

NCDOT will implement Manatee Construction Precautions and work in water will be suspended if Manatee are present in the work area.

NCDOT is committed to using BMPs necessary to protect the environment and protected species. Agencies will be advised and a Consultation initiated if any threatened or endangered species comes in conflict with any aspect of this project.

Water Quality
Water quality impacts will be minimized through the use of the North Carolina Department of Transportation's Best Management Practices for Protection of Surface Waters (1991) to control non-point source pollution.

Deck drains (weep holes) will not be installed in bridges over Smith Creek. Other areas will be studied; however, the extensive amount of bridging may dictate deck drains over some areas with standing water.
The use of curb and gutter will also be avoided, where practical, in favor of grassed swales and ditches for filtration of run-off.

Wetlands
Potential wetland impacts were minimized by reducing the roadway section from six to four lanes and increasing the amount of bridging. Maximum side slopes will be utilized where possible to minimize wetland encroachments. In addition to the above commitments, the following strategies will be adopted:

a) Lateral ditches will be avoided in wetlands wherever possible.

b) If acquisition by NCDOT of properties located between the Parkway and Smith Creek becomes necessary due to loss of access, these properties will remain in their natural state.

c) Unavoidable wetland loss will be mitigated at a minimum of a 1:1 replacement basis.

Since the distribution of the 1998 FSEIS, NCDOT has identified three sites potentially available for compensatory wetland mitigation. These are an area between the proposed alignment of the Smith Creek Parkway and Smith Creek on property owned by NCDOT (Bridge Maintenance Site), a 48-acre tract supporting tidal swamp forest within the Smith Creek watershed near Kerr Avenue (Kerr Avenue Site), and a section of McRae Street proposed for removal replaced by a low bridge (McRae Street Site).

The Bridge Maintenance Site was discussed in the 1998 FSEIS. A Phase II Environmental Assessment (ESA) of the Bridge Maintenance Site was conducted during January-April, 1998. The ESA identified minor soil and groundwater contamination of the property, but no hazardous materials were noted. Some remediation of the site may be required and, if determined to be suitable, the property is still being considered for compensatory mitigation.

The Kerr Avenue Site consists of a stand of cypress and loblolly pine (Pinus taeda). Cypress dominates the lower elevations that are flooded by diurnal tides, and pine dominates the higher areas. If the site is deemed suitable, it can be acquired for preservation as a partial requirement for compensatory mitigation to offset unavoidable impacts to wetlands resulting from the construction of TIP Project Number U-92AB.

Under the current design for the last section of the Smith Creek Parkway, NCDOT proposes to remove the portion of McRae Street located in tidal marsh south of Castle Hayne Road (US 117) and replace it with a low bridge. This would result in the restoration/enhancement of approximately 0.9 acres of tidal marsh within the present footprint of McRae Street.

The overall goal for compensatory mitigation to offset unavoidable impacts to wetlands as a result of construction of the final section of the Smith Creek Parkway (TIP Project Number U-92AB) is the restoration of approximately six acres and the preservation of approximately 28 acres of tidal swamp forest. If the sites described above are determined to be unsuitable or unavailable, then NCDOT will provide compensatory mitigation elsewhere.
Construction
All borrow and solid waste sites will be the responsibility of the Contractor. Solid waste will be disposed of in strict adherence to the NC Division of Highways "Standard Specifications for Roads and Structures". The Contractor will observe and comply with all laws, ordinances, regulations, orders, and decrees regarding the disposal of solid waste. Solid waste will not be placed into any existing land disposal sites that are in violation of state or local rules and regulations. Waste and debris will be disposed of in areas that are outside the right-of-way and provided by the Contractor. The Contractor will be responsible for obtaining borrow sites, delineating wetlands in borrow sites and obtaining written concurrence on delineated wetlands in borrow sites from the Corps of Engineers. Borrow material will not be stockpiled or disposed of adjacent to or in areas where they may runoff with stormwater into streams and impoundments. Where it is absolutely necessary to store materials adjacent to streams, they will be stored above the mean highwater mark in such a manner that they would not runoff with stormwater. Disposal of waste and debris will not be allowed in areas under the Corps of Engineers regulating jurisdiction. In the event that COE jurisdictional areas cannot be avoided, the Department will be responsible for mitigation. Where possible, no clearing beyond the toe of slope will be permitted in wetland areas; yet in high embankment areas, a maximum of 10 feet beyond the toe slope will be permitted.

The Contractor will maintain the earth surface of all waste areas, both during the construction phase and until the completion of all seeding and mulching, or other erosion control measures specified, in a manner that will effectively control erosion and siltation into areas under the Corps of Engineers regulatory jurisdiction, streams and impoundments.

Historic Structures
NCDOT will solicit ownership of the North 4th Street Bridge in an effort to prevent its demolition.

The following are stipulations per the Memorandum of Agreement (MOA) between the FHWA and the North Carolina State Historic Preservation Officer:

I. Recordation - Document expanded historic district including the North 4th Street bridge over the CSX railroad.
II. Landscaping - Implement landscaping along 3rd and 4th Streets in accordance with proposed conceptual landscaping plan.
III. Parking Lot - Acquire necessary property and construct parking lot between Davis Street and 3rd Street.
IV. Signage - NCDOT will grant authority to the North Carolina SHPO to review and comment on signage plans.
V. Lighting - NCDOT will grant authority to the North Carolina SHPO to review and comment on street and structure lighting plans.
VI. Structure Design - NCDOT will grant authority to the North Carolina SHPO to review and comment on bridge plans including railing, substructure and finishes.
VII. Dispute Resolution - FHWA will follow a designated dispute resolution process with the North Carolina SHPO.
Aviation
A Federal Aviation Administration Form 7460-1 will be completed during the final design phase of the project.

V. Monitoring and Enforcement Program
Coordination during design, right-of-way acquisition, and construction will ensure that environmental commitments are fulfilled. The construction staff of NCDOT and FHWA will monitor and enforce all pertinent specifications and contract provisions which are in accordance with the intent of the EIS and welfare of the public.

VI. Environmental Commitments

The North Carolina Department of Transportation makes the following environmental commitments regarding this project:

1. NCDOT will provide relocation assistance to businesses displaced during acquisition of right-of-way in accordance with the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Public Law 91-646) and the North Carolina Relocation Assistance Act (GS-133-5 through 133-18).

2. NCDOT will minimize long-term water quality impacts through the use of Best Management Practices for Protection of Surface Waters (1991), as identified in the Federal Aid Highway Program (FHPM) and North Carolina Administrative Code, Chapter 4.

3. NCDOT will attempt to further minimize wetland impacts in the final design of the project. All unavoidable wetland impacts will be mitigated for by the NCDOT. A final mitigation plan will be included with the permit application. A permit application will be submitted during the final design and construction plan preparation phase for jurisdictional impacts of the project.

4. NCDOT will maintain all construction equipment to comply with applicable standards for noise and exhaust emissions.

5. NCDOT will implement measures to reduce localized degradation of ambient air quality during construction. Burning of debris will be done in accordance with the North Carolina open burning regulations 15 A NCAC 2D.0520.

6. NCDOT will insure demolition or renovations of structures containing asbestos material will be in compliance with 15 a NCAC 2D.0525.

7. NCDOT will implement an erosion and sediment control program in accordance with standard policies to minimize erosion and sedimentation. All devices will be inspected periodically and after every extensive rainfall to ensure proper maintenance.

8. NCDOT will take precautions to prevent construction damage to standing trees outside the construction limits.

9. NCDOT will ensure coordination with the appropriate state and local agencies during the utility relocation phase of the project.
10. NCDOT and its contractors will not excavate, fill, or perform land clearing activities within Waters of the U.S. or any areas under the jurisdiction of the Corps of Engineers (COE), except as authorized by the COE. To ensure that all borrow and waste activities occur on high ground, except as authorized by permit, the NCDOT shall require its contractors to identify all areas to be used to borrow material, or to dispose of dredged, fill, or waste material. Documentation of the location and characteristics of all borrow and disposal sites associated with the project will be available to the COE on request.

11. NCDOT will coordinate with the resource agencies to agree on the bridge type and length to be used at the four creek/stream crossings prior to the permit application stage.

VII. Project Coordination

The 1998 Supplemental EIS has been coordinated with all appropriate local, state, and federal government agencies including the City of Wilmington and New Hanover County. Project public involvement functions included a public officials meeting (December 22, 1993 and August 2, 1994), a citizens informational workshop with a question and answer session (August 2, 1994), a small group meeting at the Wilmington Chamber of Commerce for local business leaders (August 11, 1994), and a combined corridor/design public hearing were the proposed action was presented to the public (August 7, 1996). Additional small group meetings were held for the North 4th Street Revitalization Group (June 6, 1996 and July 7, 1997) and for Wilmington business and community leaders interested in maintaining vehicular circulation between North 4th Street and Castle Hayne Road (October 24, 1996). In addition to the public and small group meetings organized during this process, additional public involvement efforts included a mailing list, phone contact, and mail contact for interested citizens, businesses, and community leaders.

VIII. Comments on the 1998 Final EIS

The Supplemental EIS is in conformance with the applicable provisions of 23 CFR 771 and satisfactorily addresses the anticipated environmental impacts, including physiographic and cultural effects.

Correspondence was received from the following agencies between the 1998 Final Supplemental EIS and the date this ROD was signed.

- United States Environmental Protection Agency, Region 4
- Department of Environment and Natural Resources
- North Carolina Wildlife Resources Commission
Comments received on the Final Supplemental EIS and responses are summarized below.

From US Environmental Protection Agency, Region 4, June 8, 1998

1. Comment
   "We also note the $9.1M increase in the 1991 FSEIS Preferred Design Alternative. It is not understood why the costs increased. Costs to traverse landfills are involved for both alternatives, but not included in either cost estimate. Clarification of these costs is requested, including identification of the relative impact of adding the 3rd Street extension and deleting the downtown spur."

Response
In the 1998 FSEIS, costs for the **1991 FSEIS Preferred Design Alternative** were presented in 1997 dollars as opposed to 1994 dollars in the 1996 DSEIS. Projected construction and right-of-way cost increases were accounted for. Costs to traverse the landfills have not been included because ultimate construction methods will dictate the quantity of waste requiring disposal and, in part, the disposal options.

2. Comment
   "The Northern Alternative would impact an older landfill which the NCDOT Geotechnical Unit found to be contributing contaminants to the groundwater. It is not clear how the concerns of impacting these different landfill sites were weighed."

Response
The extent of the old landfill associated with the **Northern Design Alternative (Preferred Design Alternative)** lends itself to minimizing impacts depending on bridge foundation location and type. The extent of the hazardous waste involvement associated with the Burnt Mill Creek Landfill and 1991 FSEIS **Preferred Design Alternative** was much less certain and the potential for cleanup and mitigation was considered greater.

3. Comment
   "... we understand the work towards defining compensatory restoration and preservation sites is progressing with a number of sites under consideration. EPA wishes to reiterate that a Section 404 wetlands permit should not be considered until a fully defined mitigation plan is approved by the reviewing agencies."

Response
See Environmental Commitment #3 (page 13).

4. Comment
   "We maintain our concern about maintenance of water quality because of the two creek crossings required for the preferred northern alternative, and the proximity elsewhere to the creek that will contribute further pollutants to the present heavy
pollutant load. Close monitoring of construction-related non-point source BMP installation and performance should be a priority.”

Response
Water quality impacts will be minimized through the use of the North Carolina Department of Transportation's Best Management Practices for Protection of Surface Waters (1991) to control non-point source pollution. In addition, deck drains (weep holes) will not be installed in bridges over Smith Creek. See Environmental Commitment #2 (page 13).

5. Comment
“although it is indicated that the state has no creek habitat restoration goals, strict adherence to best management practices during construction should still be a requirement as part of anadromous fish habitat maintenance.”

Response
See response to Comment 4 above.

6. Comment
“EPA is maintaining its environmental concern about this project because of the additional adverse impacts to Smith Creek aquatic resources.”

Response
Comment noted.

From NC Department of Environment and Natural Resources, Division of Water Quality, June 1, 1998

7. Comment
“DOT has acknowledged that the Bridge Maintenance Site may prove to be unsuitable for mitigation, based largely on logistical problems. In the event this site is not feasible, then another mitigation site offering restoration/creation opportunities must be identified.”

Response
Comment noted.

8. Comment
“We encourage the NCDOT to investigate whether or not temporary fill will be required during construction to build hauls roads and place culverts. We suggest that NCDOT include this information with the permit application, rather than applying for a permit modification after the project has been let to contract. NCDOT is advised that full restoration (including removal of fill material and planting/monitoring of vegetation) of temporary fill areas exceeding one acre will be required in accordance Condition #4 of General Certification 3114 (National Permit 33). All temporary fill material must be removed from construction access areas.”
Response
Comment noted.

From NC Wildlife Resources Commission, June 12, 1998

9. Comment
“We concur with the FSEIS for this project. We urge NCDOT to continue to minimize wetland impacts and to strictly enforce NCDOT Best Management Practices.”

Response
Comment noted.

Approved by:

[Signature]
Division Administrator
North Carolina Division
Federal Highway Administration

[Date]
8/13/98
4EAD/OEA

Mr. Richard B. Davis
Acting Manager, Planning and Environmental Branch
Division of Highways
North Carolina Department of Transportation
P.O. Box 25201
Raleigh, North Carolina 27611

Subject: Smith Creek Parkway from Third Street to Kornegay Ave.
Wilmington, New Hanover County, NC
Final Supplemental Environmental Impact Statement
T.I.P. No. U-92A & B; FA-FHW-E40108-NC

Dear Mr. Davis:

The subject document has been reviewed in accordance with
Section 102(2)(C) of the National Environmental Policy Act and
Section 309 of the Clean Air Act. The Federal Highway
Administration and the North Carolina Department of
Transportation (FHWA/NCDOT) have issued a supplemental Final EIS
to conclude the environmental review of an additional alignment,
2.8 miles long, on the north side of Smith Creek for the two
western segments of the proposed parkway. Our review of the
responses to our comments on the 1996 Draft Supplemental EIS
indicates that the responses are rather abbreviated but adequate.
We have the following comments on the Alternatives and the
Environmental Consequences sections.

Alternatives

Cost estimates are presented in table II-3. Comparing them
with those in the Draft Supplemental EIS, we note that the costs
of the preferred Northern Design Alternative have nearly doubled
due to the increased bridging and an additional interchange.
This increase in project costs appears to make the 1991 FEIS
Preferred Design Alternative economically attractive.

We also note the $9.1 million increase in the 1991 FEIS
Preferred Design Alternative from the Draft Supplement. It is
not understood why the 1991 FEIS Preferred Alternative costs
increased since that alternative was originally a 6-lane and we
assume it was compared to the new Northern Preferred Alternative
as a 4-lane roadway. Costs to traverse landfills are involved
for both alternatives, but not included in either cost estimate.
Costs could go higher for the Northern option. Clarification of
costs is appropriate including the relative impact of adding the 3d street extension and deleting the downtown spur.

Avoidance of an abandoned landfill and concern about the potential engineering difficulties and potential groundwater impact was a reason for investigating an alignment to the north of Smith Creek. This Northern Alternative would impact an older landfill which the NCDOT Geotechnical Unit found to be contributing contaminants to the groundwater. It is not clear how the concerns of impacting these different landfill sites were weighed. We did not note any Department of Natural Resources concern about potential project impacts to groundwater at the Burnt Mill Creek landfill.

*Water and Wetland Resources*

Significant effort has been taken to minimize wetland impacts. A total impact area of 5.2 acres is estimated, which we assume to be based on the limits of construction disturbance. While there appears not to be a complete wetlands mitigation plan, we understand the work towards defining compensatory restoration and preservation sites is progressing with a number of sites under consideration. EPA wishes to reiterate that a Section 404 wetlands permit should not be considered until a fully defined mitigation plan for the parkway is approved by the reviewing agencies.

We maintain our concern about maintenance of water quality because of the two creek crossings required for the preferred northern alternative, and the proximity elsewhere to the creek that will contribute further pollutants to the present heavy pollutant load. The decision to divert operational roadway runoff from the surface waters, however, is still appropriate. Close monitoring of construction-related non-point source BMP installation and performance should be a priority.

*Fisheries Impacts*

EPA is pleased with the deletion of long culverting in favor of bridging over Smith Creek. Although it is indicated the state has no creek habitat restoration goals, strict adherence to best management practices during construction should still be a requirement as part of anadromous fish habitat maintenance.
Summary

EPA believes the shift to a northern alignment is acceptable for project segments A and B, but we do not fully understand the reasons in lieu of the higher cost. EPA is maintaining its environmental concern about this project because of the additional adverse imacts to Smith Creek aquatic resources.

Thank you for the opportunity to comment on this document. Please refer any questions about the comments to Ted Bisterfeld (tel. no. 404/562-9621).

Sincerely,

Heinz J. Mueller
Chief, Office of Environmental Assessment

cc: Roy Shelton, FHWA
    John Hefner, USFWS
    Melba McGee, NCDENR
MEMORANDUM

To: Mary Kiesau
Through: John Dorney
From: Cyndi Bell
Subject: Final Supplemental Environmental Impact Statement and Final Section 4(f) Statement for Smith Creek Parkway from Third Street to Kornegay Avenue in Wilmington, New Hanover County, State Project No. 6.2250101, T.I.P. Nos. U-92A and B, DENR # 98-0728, DWQ # 12079

The referenced document has been reviewed by this office. The Division of Water Quality (DWQ) is responsible for the issuance of the Section 401 Water Quality Certification for activities which impact waters of the state including wetlands. Construction of the referenced sections of the Smith Creek Parkway will involve fill in 5.22 acres of jurisdictional wetlands and 0.71 acre of fill in waters. The 1998 FSEIS has been prepared in order to discuss two feasible build alternatives (1991 FSEIS Preferred Design Alternative and Northern Design Alternative with 3rd Street Extension) which have been refined since publication of the 1996 DSEIS. The Northern Design Alternative with 3rd Street Extension is now the designated Preferred Design Alternative in the 1998 FSEIS. DWQ offers the following comments based upon review of the FSEIS:

A) DWQ appreciates the commitments made by DOT to reduce wetland and stream impacts associated with the Northern Alternative. Based upon DOT's efforts to develop this alternative in cooperation with the review agencies, DWQ endorses the refined version of the Northern Alternative with 3rd Street Extension (Preferred Design Alternative).

B) DOT has pursued location of a wetland mitigation site concurrent to development of the preferred alternative. Following a substantial inventory of the project area, a single property known as the Bridge Maintenance Site has been identified. DOT has committed to using this site for wetland restoration and/or creation if at all possible, along with preservation of tidal swamp forest within the Smith Creek watershed. DOT has acknowledged that the Bridge Maintenance Site may prove to be unsuitable for mitigation, based largely on logistical problems. In the event this site is not feasible, then another mitigation site offering restoration/creation opportunities must be
identified. This is in accordance with 15A NCAC 2H.0506(h)(6), which requires 1:1 restoration or creation of wetlands to mitigate project impacts. We understand that DOT hopes to begin construction of project segment U-92A around October 2000. A further complication involves DOT's May 13, 1998 request to delay implementation of the Smith Creek mitigation site (associated with U-92C, which is under construction) until U-92A is let for construction. DOT is reminded that a mitigation plan for U-92A/B must be included with the application for 401 Water Quality Certification. Given the proximity of the let date, together with the uncertainty of the Bridge Maintenance Site, and ongoing mitigation problems associated with the Smith Creek Parkway, we strongly encourage DOT to develop the wetland mitigation plan in the immediate future. The mitigation plan should address how DOT intends to replace the functions and values lost as 5.22 acres of riparian wetlands are filled. DOT is advised that issuance of the 401 Water Quality Certification will be contingent upon DOT's commitment to implement riparian wetland mitigation prior to or during construction of U-92A. NCDOT is also advised that, in accordance with DWQ, Wetland Rules (15A NCAC 2H.0506(h)(3)), the Wetland Restoration Program will be available to use for wetland mitigation.

C) We encourage NCDOT to investigate whether or not temporary fill will be required during construction to build haul roads and place culverts. We suggest that NCDOT include this information with the permit application, rather than applying for a permit modification after the project has been let to contract. NCDOT is advised that full restoration (including removal of fill material and planting/monitoring of vegetation) of temporary fill areas exceeding one acre will be required in accordance with Condition 4 of General Certification 3114 (Nationwide Permit 33). All temporary fill material must be removed from construction access areas. On May 27, 1997, DWQ submitted a draft restoration policy for temporary impact areas to NCDOT. We anticipate finalization of this policy prior to the construction of this project.

Based upon the project description provided in the FSEIS, an Individual 401 Water Quality Certification will be required for this. Final permit authorization will require formal application by NCDOT and written concurrence from DWQ. Please be aware that this approval will be contingent upon evidence of avoidance and minimization of wetland and stream impacts to the extent practical, and provision of wetland and stream mitigation where necessary.

DWQ appreciates the opportunity to provide comments on the FSEIS. DOT is reminded that issuance of a 401 Water Quality Certification requires satisfaction of water quality concerns. To ensure that water quality standards are met and no wetland/stream uses are lost. Questions regarding the 401 Certification Program should be directed to Cyndi Bell at (919) 733-1786 in DWQ's Water Quality Environmental Sciences Branch.

Cc: Dave Timpy, COE, Wilmington
Tom McCartney, FWS
David Cox, WRC
Joanne Steenhuis, WRO

U92FSEIS
MEMORANDUM

TO: Melba McGee
Office of Intergovernmental and Legislative Affairs, DEHNR

FROM: David Cox, Highway Project Coordinator
Habitat Conservation Program

DATE: June 12, 1998

SUBJECT: Final Supplemental Environmental Impact Statement (FSEIS) for Smith Creek Parkway, from Third Street to Kornegay Avenue, New Hanover County, North Carolina. TIP No. U-92A & B, SCH Project No. 98-5-0728.

Staff biologists with the N. C. Wildlife Resources Commission (NCWRC) have reviewed the subject FSEIS and are familiar with habitat values in the project area. The purpose of this review was to assess project impacts to fish and wildlife resources. Our comments are provided in accordance with certain provisions of the National Environmental Policy Act (42 U.S.C. 4332(2)(c)) and the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661-667d).

The proposed project involves the construction of a freeway on new location from Third Street to Kornegay Avenue in Wilmington and will also provide a new connection to US 117. The project length is approximately 2.8 miles. Wetland impacts associated with the preferred alternative have been substantially reduced from 14.4 acres to 5.22 acres. These reductions came as a result of alignment shifts and an increase in the use of bridges.

The subject document adequately discusses benefits, social impacts, and traffic analysis of the final build alternatives. The document also adequately describes anticipated impacts to natural resources from construction of the preferred alternative, the Northern Design Alternative with the Third Street Extension.

We have reviewed the responses provided to address our comments of June 12, 1996, on the Draft Supplemental EIS. We are pleased that NCDOT has reduced wetland impacts by over 60%. This will help reduce the required wetland mitigation for this project. The FSEIS also discusses probable wetland mitigation scenarios which include the "Bridge Maintenance Site". We have been involved in the feasibility study for this site and it appears that restoration of wetlands is feasible at this location. We feel that the
Identification of a site that has already been evaluated to this level of detail is a positive step toward providing up-front wetland mitigation. We are also aware that the site known as the "Smith Creek Site" will be constructed during the construction of this segment of U-92. We feel that there is an excellent opportunity to have the "Bridge Maintenance Site" constructed prior to the initiation of construction of this project.

At this time, we concur with the FSEIS for this project. We urge NCDOT to continue to minimize wetland impacts and to strictly enforce NCDOT Best Management Practices.

Thank you for the opportunity to review and comment on this FSEIS. If we can further assist your office, please contact me at (919) 528-9886.

cc: USFWS, Raleigh
    Dave Timpy, USACOE, Wilmington