

May 9, 2006

Mr. Mitch Barron
Newland Communities
31 Hillsboro Street
Pittsboro, NC 27312

EXHIBIT B

Michael F. Easley, Governor
William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources

Alan W. Klimek, P.E. Director
Division of Water Quality

RECEIVED

MAY 15 2006

RALEIGH REGULATORY FIELD OFFICE

Re: Briar Chapel development, Orange County
DWQ #2005-0732; USACE Action ID. No. 200121252
APPROVAL of 401 Water Quality Certification

Dear Mr. Barron:

Attached hereto is a copy of Certification No. 3567 issued to Newland Communities, dated May 9, 2006. In addition, you should get any other federal, state or local permits before you go ahead with your project including (but not limited to) Solid Waste, Sediment and Erosion Control, Stormwater, Dam Safety, Non-discharge and Water Supply Watershed regulations.

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

Sincerely,

Alan W. Klimek, P.E.

AWK/jrd

Attachments: Certificate of Completion

cc: Todd Tugwell, U.S. Army Corps of Engineers, Raleigh Regulatory Field Office
Eric Kulz, DWQ, Raleigh Regional Office
John Holley, DLR Raleigh Regional Office
File Copy
Central Files
✓ Sean Clark, Soil and Environmental Consultants
Pete Colwell, Stantec, 801 Jones Franklin Road, Raleigh, NC 27606
Elaine Chiosso, Haw River Assembly, P.O. Box 187, Bynum, NC 27228
William Sommers, 1067 Fearrington Post, Pittsboro, NC 27312
Attendees of Public Hearing who requested 401 decision
Leah Friedman, Chapel Hill Bureau, Raleigh News and Observer

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One
North Carolina
Naturally

401 Oversight/Express Review Permitting Unit
1650 Mail Service Center, Raleigh, North Carolina 27699-1650
2321 Crabtree Boulevard, Suite 250, Raleigh, North Carolina 27604
Phone (919) 733-1786 / Fax (919) 733-6893
Internet: <http://www.ncwaterquality.org>

NORTH CAROLINA 401 WATER QUALITY CERTIFICATION

THIS CERTIFICATION is issued in conformity with the requirements of Section 401 Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Division of Water Quality (DWQ) Regulations in 15 NCAC 2H, Section .0500 to Newland Communities to permanently fill 0.67 acres of jurisdictional wetlands and 1,412 linear feet of streams along with temporary impacts to 0.137 acres of wetlands and 211 linear feet of streams in the Cape Fear River Basin, associated with the construction of Briar Chapel development in Chatham County, North Carolina, pursuant to an application filed on the 17th day of June of 2005, the Public Notice issued by the US Army Corps of Engineers on June 14, 2005 and a revised applications dated December 12, 2005 and February 24,

The application and supporting documentation provides adequate assurance that the proposed work will not result in a violation of applicable Water Quality Standards and discharge guidelines. Therefore, the State of North Carolina certifies that this activity will not violate the applicable portions of Sections 301, 302, 303, 306, 307 of PL 92-500 and PL 95-217 if conducted in accordance with the application, the supporting documentation, and conditions hereinafter set forth.

This approval is only valid for the purpose and design submitted in the application materials and as described in the Public Notice. If the project is changed, prior to notification a new application for a new Certification is required. If the property is sold, the new owner must be given a copy of the Certification and approval letter and is thereby responsible for complying with all conditions of this Certification. Any new owner must notify the Division and request the Certification be issued in their name. Should wetland or stream fill be requested in the future, additional compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). If any plan revisions from the approved site plan result in a change in stream or wetland impact or an increase in impervious surfaces, the DWQ shall be notified in writing and a new application for 401 Certification may be required. For this approval to be valid, compliance with the conditions listed below is required.

Conditions of Certification:

1. Impacts Approved

The following impacts are hereby approved as long as all of the other specific and general conditions of this Certification (or Isolated Wetland Permit) are met. No other impacts are approved including incidental impacts:

	Amount Approved (Units)	Plan Location or Reference
Stream (permanent)	1,653 feet	Site plan
Stream (temporary)	211 feet	Site plan
404 Wetlands (permanent)	0.67 acres	Site plan
404 Wetlands (temporary)	0.137 acres	Site plan

Sediment and Erosion Control:

2. 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 in order to protect surface waters standards:
 - a. The erosion and sediment control measures for the project must be designed, installed, operated, and maintained in accordance with the most recent version of the *North Carolina Sediment and Erosion Control Planning and Design Manual*.
 - b. The 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.
 - c. 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*.
 - d. The reclamation measures and implementation must comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act.
3. Sensitive Watershed Erosion and Sediment Control Practices
The Division of Land Resources' Design Standards in Sensitive Watersheds (15A NCAC 04B .0124) must be adhered to throughout the life of this project.
4. 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 404/401 Permit Application. 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;
5. Sediment and erosion control measures shall not be placed in wetlands or waters to the maximum extent practicable. If placement of sediment and erosion control devices in wetlands and waters is unavoidable, they shall be removed and the natural grade restored within six months of the date that the Division of Land Resources has released the project;
6. Construction Stormwater Permit NCG010000

Upon the approval of an Erosion and Sedimentation Control Plan issued by the Division of Land Resources (DLR) or a DLR delegated local erosion and sedimentation control program, an NPDES General stormwater permit (NCG010000) administered by DWQ is automatically issued to the project. This General Permit allows stormwater to be discharged during land disturbing construction activities as stipulated by conditions in the permit. If your project is covered by this permit [applicable to construction projects that disturb one (1) or more acres], full compliance with permit conditions including the sedimentation control plan, self-monitoring, record keeping and reporting requirements are required. A copy of this permit and monitoring report forms may be found at http://h2o.enr.state.nc.us/su/Forms_Documents.htm.

Continuing Compliance:

7. Newland Communities, shall conduct construction activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with section 303(d) of the Clean Water Act) and any other appropriate requirements of State law and federal law. If the Division determines that such standards or laws are not being met (including the 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, the Division may reevaluate and modify this Certification to include conditions appropriate to assure compliance with such standards and requirements in accordance with 15A NCAC 2H.0507(d). Before modifying the Certification, the Division shall notify Newland Communities and the US Army Corps of Engineers, provide public notice in accordance with 15A NCAC 2H.0503 and provide opportunity for public hearing in accordance with 15A NCAC 2H.0504. Any new or revised conditions shall be provided to Newland Communities in writing, shall be provided to the United States Army Corps of Engineers for reference in any Permit issued pursuant to Section 404 of the Clean Water Act, and shall also become conditions of the 404 Permit for the project;

Mitigation:

8. Compensatory stream mitigation shall be done through a combination of on-site preservation of approximately 63,412 linear feet of stream and off-site restoration of 2,200 linear feet of streams at the Harpers Crossroads stream mitigation site. Both of these mitigation efforts shall be protected through use of conservation easement written to satisfy the US Army Corps of Engineers. Uses which may be allowable in the protected stream buffers include water dependent activities and greenway trails upon additional written approval of the Division of Water Quality and US Army Corps of Engineers. These provisions should be explicitly reflected in the conservation easements.

A final compensatory mitigation plan for the Harpers Crossroads site must be approved in writing by this Office before any of the impacts approved herein are conducted. Additionally, the compensatory mitigation plan must be completely constructed and implemented according to the plans approved by this Office before any permanent building or road associated with the project is occupied or opened. The mitigation must be maintained according to the approved plan and permanently protected by the use of conservation easements or similar protections. Any repairs or adjustments to the mitigation site must be made according to the approved plan or must receive written approval from this Office to make the repairs or adjustments.

Road Crossings:

9. Culverts required for this project shall be installed in such a manner that the original stream profiles are not altered. Existing stream dimensions (including the cross section dimensions, pattern, and longitudinal profile) must be maintained above and below locations of each culvert. Culverts shall be designed and installed to allow for aquatic life movement as well as to prevent head cutting of the streams. If any of the existing pipes are or become perched, the appropriate stream grade shall be re-established or, if the pipes installed in a perched manner, the pipes shall be removed and re-installed correctly.

Placement of culverts and other structures in waters, streams, and wetlands must be placed below the elevation of the streambed by one foot for all culverts with a diameter greater than 48 inches, and 20 percent of the culvert diameter for culverts having a diameter less than 48 inches, to allow low flow passage of water and aquatic life. Design and placement of culverts and other structures including temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands or streambeds or banks, adjacent to or upstream and down stream of the above structures. The applicant is required to provide evidence that the equilibrium shall be maintained if requested in writing by DWQ.

Other conditions:

10. Written Stormwater Management Plan (Final Plan Needed)

A final, written stormwater management plan for each of the 37 identified subwatersheds discussed in the February 24, 2006 letter (including signed and notarized Operation and Maintenance Agreements) shall be submitted to the 401 Oversight and Express Permitting Unit (2321 Crabtree Blvd., Suite 250, Raleigh, NC, 27604) within 60 days of the issuance of the 401 Water Quality Certification. The stormwater plans shall utilize constructed wetlands, bioretention areas, wet ponds followed by forested filter strips and similar best management practices designed to remove nutrients. Finally, treated stormwater shall be directed to flow into remaining wetlands on site at non-erosive velocities in order to maintain the hydrology of these wetlands.

The stormwater management plan may be submitted to DWQ in phases for written approval as long as no impact to wetlands or streams occur in that phase until written approval is received from DWQ. You have the option of using the Express Review Program for expedited approval of these plans. If you propose to use the Express Review Program, remember to include the appropriate fee with the plan. The stormwater management plan must include plans, specifications, and worksheets for stormwater management facilities that are appropriate for the surface water classification and designed to remove at least 85% TSS according to the most recent version of the NC DENR Stormwater Best Management Practices Manual. These facilities must be designed to treat the runoff from the *entire project*, unless otherwise explicitly approved by the Division of Water Quality. Also, before any permanent building is occupied at the subject site, the facilities (as approved by this Office) shall be constructed and operational, and the stormwater management plan (as approved by this Office) shall be implemented. The structural stormwater practices as approved by this Office as well as drainage patterns must be maintained in perpetuity. No changes to the structural stormwater practices shall be made without written authorization from the Division of Water Quality.

11. Water Quality Monitoring

Additional written approval is required for a water quality monitoring plan for this project. This plan shall be designed to determine whether there are any water quality impacts from this project and shall include physical, chemical and biological monitoring. Written approval from DWQ for this plan shall be received before any streams or wetlands are impacted on this site. This plan shall be for a minimum of

five (5) years during and immediately after construction. DWQ will then evaluate whether monitoring is required beyond this five (5) year time period.

12. Downstream stability – On-site stormwater management and the monitoring program shall be directed at ensuring that streambanks downstream of the development remain in a stable condition or that additional instability not be induced as a result of this project.

Also, this approval to proceed with your proposed impacts or to conduct impacts to waters as depicted in your application shall expire upon expiration of the 404 Permit.

If this Certification is unacceptable to you, you have the right to an adjudicatory hearing upon written request within sixty (60) days following receipt of this Certification. This request must be in the form of a written petition conforming to Chapter 150B of the North Carolina General Statutes and filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. If modifications are made to an original Certification, you have the right to an adjudicatory hearing on the modifications upon written request within sixty (60) days following receipt of the Certification. Unless such demands are made, this Certification shall be final and binding.

This the 9th day of May 2006
DIVISION OF WATER QUALITY



Alan W. Klimek, P.E.

AWK/jrd



Michael F. Easley, Governor

William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural Resources

Alan W. Klimek, P.E. Director
Division of Water Quality

8/11/06

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AUG 15 2006

RALEIGH REGULATORY FIELD OFFICE

Mr. Steven J. Levitas
Kilpatrick Stockton LLP
Suite 300
3737 Glenwood Avenue
Raleigh, NC 27612

Dear Mr. Levitas:

RE: Clarification of conditions of 401 Water Quality Certification
Briar Chapel Development
Chatham County
DWQ # 2005-0732; USACE Action Id. No. 200121252

On June 16, 2006, you requested clarification from the Division of Water Quality regarding several issues related to the 401 Certification issued on May 9, 2006 to Newland Communities. The purpose of this letter is to clarify those issues as follows. In addition, I have added notes about DWQ's review of your stream mitigation plan and environmental monitoring program for the development.

A. Clarifications of 401 conditions.

- I. Condition 3: The Division understands that the NC Division of Land Resources (or Chatham County which was delegated responsibility from the Division of Land Resources) has issued several erosion and sedimentation control permits to Newland Communities before the issuance of the 401 Certification. Since these approvals predated the 401 Certification, the Division will not require that these earlier approvals be redesigned to meet the language of Condition 3. However, all future erosion and sedimentation control approvals will need to comply with the provisions of Condition 3. In addition, the Division did not intend to require compliance with 15A NCAC 04B .0124(a), which we recognize would be impractical.
- II. Condition 8: The Division understands that the preservation mechanism for the Harpers Crossroads mitigation site will be a deed restriction that is approved by the US Army Corps of Engineers. This is acceptable to the Division and is captured in the phrase "... or similar mechanisms" in the 401 Certification.
- III. Condition 10:
 - a. To clarify the ambiguity between the first and second paragraphs of this condition, the stormwater management plans for the project may be submitted to DWQ in phases provided that no impact to wetlands or streams occurs in a phase until written approval of the stormwater management plan for that phase is provided by DWQ.
 - b. The requirement to direct stormwater flow into remaining wetlands on the site at non-erosive velocities applies only to stormwater management devices that are adjacent to wetlands. It was not our intention to require you to pump

stormwater from other areas of the site to remote wetlands, which would not be practical or desirable.

- c. The 85% TSS removal requirement in the 401 certification applies to "stormwater management facilities." As discussed above, the 401 Certification requires that stormwater management plans for each phase of the project be approved by DWQ. We do not expect that such plans will include engineered stormwater management facilities for low density areas of the project with low impervious surface area. In addition, the Division expects that with areas of lower impervious surface area that "... similar best management practices that remove nutrients" such as grassed swales and vegetated riparian buffers should be sufficient rather than more intensive engineered stormwater devices such as constructed wetlands.

B. Harpers Crossroads Stream mitigation plan

The stream mitigation plan dated September 2005 as prepared by Mid-Atlantic Mitigation, LLC is acceptable to the Division of Water Quality and is hereby approved with the following addition. The area within the easement at the upper reach of the mitigation area adjacent to the western property line (shown on the Planting plan) shall be planted in woody vegetation to the easement line.

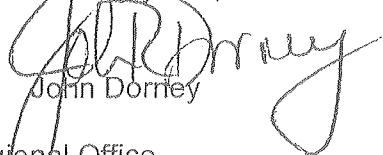
C. Environmental Monitoring Program

The following changes must be made in the proposed monitoring program and a final plan submitted for written DWQ approval.

- a. Groundwater monitoring wells will need to be located above the sprayfield locations in order to properly characterize the groundwater in this area.
- b. Groundwater monitoring of dissolved oxygen is not required.
- c. Section 2.2 – Monitoring will be done on perennial and intermittent streams rather than perennial and ephemeral streams.
- d. Macrobenthos sampling must be done before construction as well as during construction in order to have comparable data. In addition, macrobenthos sampling must be done at the same time of the year as the samples done prior to construction.
- e. Section 2.3.2 – The Division of Water Quality's procedures should be used rather than EPA's.

I hope this letter clarifies the remaining issues for this project. If you have additional questions, please call me at 919-733-9646.

Sincerely yours,



John Dornrey

Cc: Rick Shiver, DWQ
Eric Kulz, DWQ Raleigh Regional Office
Todd Tugwell, Raleigh Field Office US Army Corps of Engineers
Elaine Chiosso, Haw River Assembly, P.O. Box 187, Bynum, NC 27228
William Sommers, 1067 Fearrington Post, Pittsboro, NC 27312
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Sean Clark, Soil and Environmental Consultants
Mitch Barron, Newland Communities, 31 Hillsboro Street, Pittsboro, NC 27312
Stratford Kay, NC DWQ