



North Carolina Department of Environment and Natural Resources

Division of Water Quality  
Coleen H. Sullins  
Director

Beverly Eaves Perdue  
Governor

Dee Freeman  
Secretary

May 15, 2009

Mr. H. Brantley Powell, Director of Public Works  
HBP Properties, LLC  
P.O. Box 5365  
Cary, NC 27512

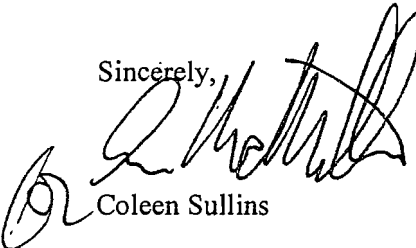
Re: Legend Oaks Subdivision – Phase III, Chatham County  
DWQ Project # 20051986, Ver. 3; USACE Action ID. No. 200900106  
Ut to Cub Creek [030605, 16-41-2-10-(0.5), WSIV, NSW]  
**APPROVAL of 401 Water Quality Certification with Additional Conditions - MODIFICATION**

Dear Mr. Powell:

Attached hereto is a copy of Certification No. 3787 issued to Mr. H. Brantley Powell of HBP Properties, LLC, Inc., dated May 15, 2009. **This Certification replaces the Certification issued to you on March 31, 2009.** 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,



Coleen Sullins

CHS/cbk/ijm

Attachments: Certificate of Completion  
NC DWQ 401 WQC Summary of Permitted Impacts and Mitigation Requirements

cc: Becky Fox, EPA, 1307 Firefly Road, Whittier, NC 28789  
U.S. Army Corps of Engineers, Raleigh Regulatory Field Office, Wilmington District  
Lauren Witherspoon, DWQ Raleigh Regional Office  
DLR, Raleigh Regional Office  
File Copy  
Jennifer Burdette, Burdette Land Consulting, 10212 Creedmoor Road, Raleigh, NC 27615

Filename: 051986Ver3LegendOaksSDPhaseIII(Chatham)401\_IC\_MOD

## 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 Mr. H. Brantley Powell of HBP Properties, LLC to fill 0.006 acres of 404/wetland and 414 linear feet of perennial stream (376 linear feet permanent impact and 38 linear feet temporary impact) in Cape Fear River Basin, to construct the residential subdivision at the site. The site is located north of Lystra Road and east of US Highway 15/501, near Chapel Hill, in Chatham County, North Carolina, pursuant to a permit application dated January 21, 2009, and received by the DWQ on January 28, 2009, by Public Notice issued by the USACE on January 28, 2009, and received by the DWQ on January 29, 2009, and by all additional correspondences received by the DWQ on March 12, 2009, March 26, 2009 and May 12, 2009.

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:

Type of Impact	Amount Approved (Units)	Plan Location or Reference
404/401 Wetlands	0.006 (acres)	Application and Public Notice
Stream (perennial)	414 [(linear feet) 376 linear feet permanent impact and 38 linear feet temporary impact]	Application and Public Notice

### Sediment and Erosion Control:

- 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. 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;
  4. Sediment and erosion control measures shall not be placed in wetlands or waters without prior approval from the Division. If placement of sediment and erosion control devices in wetlands and waters is unavoidable, design and placement of temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands or stream beds or banks, adjacent to or upstream and down stream 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 or locally delegated program has released the project.
  5. Protective Fencing - The outside buffer, wetland or water boundary and along the construction corridor within these boundaries approved under this authorization shall be clearly marked with orange warning fencing (or similar high visibility material) for the areas that have been approved to infringe within the buffer, wetland or water prior to any land disturbing activities.

Continuing Compliance:

6. Mr. H. Brantley Powell and HBP Properties, LLC 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 Mr. H. Brantley Powell and HBP Properties, LLC 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 Mr. H. Brantley Powell and HBP Properties, LLC 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;

7. 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/sw/Forms\\_Documents.htm](http://h2o.enr.state.nc.us/sw/Forms_Documents.htm).

Mitigation:

8. Compensatory Mitigation Using the Ecosystem Enhancement Program (EEP)

Mitigation must be provided for the proposed impacts as specified in the table below. We understand that you wish to make a payment to the Wetlands Restoration Fund administered by the NC Ecosystem Enhancement Program (EEP) to meet this mitigation requirement. This has been determined by the DWQ to be a suitable method to meet the mitigation requirement. Until the EEP receives and clears your check (made payable to: DENR – Ecosystem Enhancement Program Office), no impacts specified in this Authorization Certificate shall occur. The EEP should be contacted at (919) 733-5205 if you have any questions concerning payment into a restoration fund. You have *60 days* from the date of this approval to make this payment. **For accounting purposes, this Authorization Certificate authorizes payment into the Wetlands Restoration Fund to meet the following compensatory mitigation requirement:**

Type of Impact	Compensatory Mitigation Required	River and Sub-basin Number
Stream (perennial)	376 (linear feet)	Cape Fear/03030002

9. Certificate of Completion

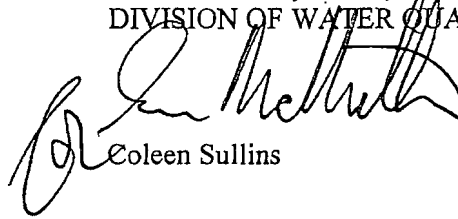
Upon completion of all work approved within the 401 Water Quality Certification or applicable Buffer Rules, and any subsequent modifications, the applicant is required to return the attached certificate of completion to the 401/Wetlands Unit, North Carolina Division of Water Quality, 1650 Mail Service Center, Raleigh, NC, 27699-1650.

**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 or CAMA Permit.**

May 15, 2009

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 15<sup>th</sup> day of May 2009  
DIVISION OF WATER QUALITY



Coleen Sullins

CHS/cbk/ijm

3787



North Carolina Department of Environment and Natural Resources

Division of Water Quality

Coleen H. Sullins

Director

Beverly Eaves Perdue  
Governor

Dee Freeman  
Secretary

North Carolina Division of Water Quality

**401 Water Quality Certification**

**Summary of Permitted Impacts and Mitigation Requirements**

In accordance with 15A NCAC 2H.0500, Mr. H. Brantley Powell, of the HBP Properties, LLC, to fill or otherwise impact 0.006 acres of 404/wetland and 414 linear feet of perennial stream (376 linear feet permanent impact and 38 linear feet temporary impact), in the Cape Fear River Basin, to construct the residential subdivision at the site, which is located at north of Lystra Road and east of US Highway 15/501, near Chapel Hill, in Chatham County, North Carolina. All activities associated with these authorized impacts must be conducted with the conditions listed in the attached Permit transmittal letter. THIS CERTIFICATION IS NOT VALID WITHOUT THE ATTACHMENTS.

**COMPENSATORY MITIGATION REQUIREMENTS, ECOSYSTEM ENHANCEMENT PROGRAM**

NC EEP NAME            Legend Oaks Phase III  
DWQ PROJECT #:        20051986, Ver. 3  
LOCATION:                Near Chapel Hill, NC  
COUNTY                Chatham  
BASIN/ SUB BASIN      Cape Fear/03030002

As required by 15A NCAC 2H.0500, and the conditions of this Certification, you are required to compensate for the above mitigable impacts through the restoration, creation, enhancement or preservation of wetlands, surface waters and riparian buffers as outlined below prior to conducting any activities that impact or degrade the waters of the state.

Note: Acreage requirements proposed to be mitigated through the Ecosystem Enhancement Program must be rounded to one-quarter acre increments and linear foot requirements must be rounded up to the nearest foot according to 15 2R.0503(b).

Impacts	Mitigation
376 Linear Feet of Perennial Stream	376 Linear Feet of Perennial Stream

One of the options you have available to satisfy the compensatory mitigation requirement is through the payment of a fee to the Wetlands Restoration Fund per NCAC 2R.0503. If you choose this option, please sign this form and mail the form along with a copy of your 401 Certification or Buffer Approval to the Ecosystem Enhancement Program at the address below. An invoice for the appropriate amount of payment will be sent to you upon receipt of this form. PLEASE NOTE, THE ABOVE IMPACTS ARE NOT AUTHORIZED UNTIL YOU RECEIVE NOTIFICATION THAT YOUR PAYMENT HAS BEEN PROCESSED BY THE ECOSYSTEM ENHANCEMENT PROGRAM.

Signature \_\_\_\_\_ Date \_\_\_\_\_

**ECOSYSTEM ENHANCEMENT PROGRAM**

1652 Mail Service Center  
RALEIGH, N.C. 27699-1652  
(919) 716-1921

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