



DEPARTMENT OF THE ARMY  
WILMINGTON DISTRICT, CORPS OF ENGINEERS  
PO BOX 1890  
WILMINGTON NC 28402-1890



October 2, 2006

Regulatory Division

Action ID. 200121252

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

Dear Ms. Barron:

Enclosed is a Department of the Army (DA) permit to authorize the proposed placement of fill material into 1,653 linear feet of stream channel and 0.6655 acre of wetland, and temporary impacts of 211 linear feet of stream channel and 0.137 acre of wetland associated with the construction of Briar Chapel Subdivision. The project site is located east and west of US Highway 15-501, and north of Andrew's Store Road (SR 1528), and south of Mann's Chapel Road (SR 1532), approximately 5 miles south of Chapel Hill, in Chatham County, North Carolina.


Any deviation in the authorized work will likely require modification of this permit. If a change in the authorized work is necessary, you should promptly submit revised plans to the Corps showing the proposed changes. You may not undertake the proposed changes until the Corps notifies you that your permit has been modified.

Carefully read your permit. The general and special conditions are important. Your failure to comply with these conditions could result in a violation of Federal law. Certain significant general conditions require that:

- a. You must complete construction before December 31, 2016.
- b. You must notify this office in advance as to when you intend to commence and complete work.
- c. You must allow representatives from this office to make periodic visits to your worksite as deemed necessary to assure compliance with permit plans and conditions.

You should address all questions regarding this authorization to Mr. Monte Matthews, Raleigh Regulatory Field Office, at (919) 876-8441, extension 30.

Sincerely,

*for*   
John E. Pulliam, Jr.  
Colonel, U.S. Army  
District Engineer

Enclosures

Copy Furnished (with enclosures):

Chief, Source Data Unit  
NOAA/National Ocean Service  
ATTN: Sharon Tear N/CS261  
1315 East-west Hwy., Rm 7316  
Silver Spring, MD 20910-3282

Mr. Ronald J. Mikulak, Chief  
Wetlands Protection Section - Region IV  
Water Management Division  
U.S. Environmental Protection Agency  
61 Forsyth Street  
Atlanta, Georgia 30303

Copies Furnished with special conditions  
and plans:

U.S. Fish and Wildlife Service  
Fish and Wildlife Enhancement  
Post Office Box 33726  
Raleigh, North Carolina 27636-3726

Mr. Doug Huggett  
Division of Coastal Management  
N.C. Department of Environment  
and Natural Resources  
400 Commerce Avenue  
Morehead City, North Carolina 28557

Mr. Ron Sechler  
National Marine Fisheries Service  
Pivers Island  
Beaufort, North Carolina 28516

Mr. David Rackley  
National Marine Fisheries Service  
219 Fort Johnson Road  
Charleston, South Carolina 29412-9110

DEPARTMENT OF THE ARMY PERMIT

RECEIVED

SEP 29 2006

REGULATORY  
VT IS HQ 300

Permittee: NEWLAND COMMUNITIES, MR. MITCH BARRON

Permit No: 200121252

Issuing Office: USAED, WILMINGTON

**NOTE:** The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of the office acting under the authority of the commanding officer.

You are authorized to perform work in the accordance with the terms and conditions specified below.

**Project Description:** The project, known as Briar Chapel, is a residential and commercial mixed-use development on approximately 1500 acres of land. Construction required for the development will require 12 road crossings and 9 temporary utility crossings. Authorized work includes mechanized landclearing, excavation, and the placement of culverts and fill material, including riprap. Proposed impacts to waters of the U.S. include the permanent loss of 1,653 linear feet of stream channel and 0.6655 acre of wetland, and temporary impacts to 211 LF of stream channel and 0.137 acre of wetland. The applicant will mitigate for unavoidable impacts to streams and wetlands by payment into the North Carolina Ecosystem Enhancement Program for the restoration of 0.6655 acre of riparian wetlands, the restoration of 2,127 linear feet of stream channel at the Harpers Crossroads Mitigation Site, and the on-site preservation of 59.3 acres of wetlands and 63,412 linear feet of stream channel.

**Project Location:** The project is located west and east of US Highway 15-501, and north of Andrew's Store Road (SR 1528), and south of Mann's Chapel Road (SR 1532), approximately 5 miles south of Chapel Hill, in Chatham County, North Carolina. Coordinates (in decimal degrees) for the site are 35.8251 ° North, 79.1059 ° West.

Permit Conditions:

**General Conditions:**

1. The time Limit for completing the work authorized ends on December 31, 2016. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Conditions 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and state coordination required to determine if the remains warrant a recovery effort or if the site eligible for listing in the National Register of Historic Places.

4. If you sell the property associate with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

### Special Conditions:

\*SEE ATTACHED SPECIAL CONDITIONS

### Further Information:

**1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:**

- ( ) Section 10 of the Rivers and Harbors Act of 1899 (33 U.S. C. 403).
- (X) Section 404 of the clean Water Act (33 U.S.C. 1344).
- ( ) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1413).

**2. Limits of this authorization.**

- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

**3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:**

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United states in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. **Reliance on Applicant's Data:** The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measure by contract or otherwise and bill you for the cost.

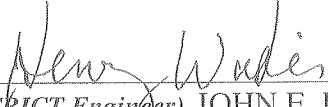
6. **Extensions.** General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

  
\_\_\_\_\_  
(PERMITTEE) NEWLAND COMMUNITIES  
MR. MITCH BARRON

9-28-06  
\_\_\_\_\_  
(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

  
\_\_\_\_\_  
(DISTRICT Engineer) JOHN E. PULLIAM, JR., COLONEL

10-2-06  
\_\_\_\_\_  
(DATE)

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

**SPECIAL CONDITIONS (Action ID. 200121252; Mr. Mitch Barron, Newland Communities)**

**Work Limits**

1. All work authorized by this permit must be performed in strict compliance with the attached plans (Exhibit A), which are a part of this permit. Any modification to these plans must be approved by the US Army Corps of Engineers (USACE) prior to implementation.
2. Except as authorized by this permit or any USACE approved modification to this permit, no excavation, fill or mechanized land-clearing activities shall take place at any time in the construction or maintenance of this project, within waters or wetlands. This permit does not authorize temporary placement or double handling of excavated or fill material within waters or wetlands outside the permitted area. This prohibition applies to all borrow and fill activities connected with this project.
3. Except as specified in the plans attached to this permit, no excavation, fill or mechanized land-clearing activities shall take place at any time in the construction or maintenance of this project, in such a manner as to impair normal flows and circulation patterns within waters or wetlands or to reduce the reach of waters or wetlands.

**Related Laws**

4. All mechanized equipment will be regularly inspected and maintained to prevent contamination of waters and wetlands from fuels, lubricants, hydraulic fluids, or other toxic materials. In the event of a spill of petroleum products or any other hazardous waste, the permittee shall immediately report it to the N.C. Division of Water Quality at (919) 733-5083, Ext. 526 or (800) 662-7956 and provisions of the North Carolina Oil Pollution and Hazardous Substances Control Act will be followed.

**Project Maintenance**

5. The permittee shall advise the USACE in writing at least two weeks prior to beginning the work authorized by this permit and again upon completion of the work authorized by this permit. Additionally, prior to beginning the work authorized by this permit, the permittee shall hold a pre-construction meeting with the USACE, Raleigh Regulatory Field Office Project Manager (available at telephone 919-876-8441) with the USACE and the contractor who will perform the authorized work.
6. Unless otherwise authorized by this permit, all fill material placed in waters or wetlands shall be generated from an upland source and will be clean and free of any pollutants except in trace quantities. Metal products, organic materials (including debris from land clearing activities), or unsightly debris will not be used.

7. The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this permit. A copy of this permit, including all conditions, shall be available at the project site at all times during construction and maintenance of this project.

8. The permittee shall employ all sedimentation and erosion control measures necessary to prevent an unacceptable increase in sedimentation or turbidity within waters and wetlands outside the permit area. This shall include, but is not limited to, the immediate installation of silt fencing or similar appropriate devices around all areas subject to soil disturbance or the movement of earthen fill, and the immediate stabilization of all disturbed areas. Additionally, the project must remain in full compliance with all aspects of the Sedimentation Pollution Control Act of 1973 (North Carolina General Statutes Chapter 113A Article 4).

9. The permittee, upon receipt of a notice of revocation of this permit, or upon its expiration before completion of the work will, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the water or wetland to its pre-project condition.

10. The permittee shall ensure that culverts placed in waters of the U.S., as authorized by this permit, are installed in such a manner that adjacent stream segments are not altered. Existing stream dimensions (including the cross section dimensions, patterns and longitudinal profile) must be maintained upstream and downstream of each culvert. The culverts shall be designed and installed to allow for the passage of aquatic life and to prevent head-cutting of the streams. Any pipes installed in a perched manner, may be required to be removed and re-installed correctly.

11. Stream banks shall be stabilized immediately following disturbances associated with authorized road and utility crossings. For all temporary impacts, the final stream dimensions shall match pre-project conditions. Where tree removal is required, stumps and roots shall remain intact wherever possible. All riprap placed for stabilization within streams shall be placed only on the banks of the channel if possible. Any riprap placed on the streambed shall be embedded into the substrate to allow the passage of aquatic life and prevent any impoundment during low-flow conditions.

### **Enforcement**

12. Violations of these conditions or violations of Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act must be reported in writing to the Wilmington District U.S. Army Corps of Engineers within 24 hours of the permittee's discovery of the violation.

## Mitigation

13. In order to compensate for permanent impacts to 0.6655 acre of wetlands the permittee shall make payment to the North Carolina Ecosystem Enhancement Program (NCEEP) in the amount determined by the NCEEP, sufficient to perform the restoration of 0.6655 acre of riparian, forested wetlands in the Cape Fear River Basin, Cataloging Unit 03030002. Construction within jurisdictional areas on the property shall begin only after the permittee has made full payment to the NCEEP and provided a copy of the payment documentation to the USACE, and the NCEEP has provided written confirmation to the USACE that it agrees to accept responsibility for the mitigation work required, in compliance with the MOU between the North Carolina Department of Environment and Natural Resources and the United States Army Corps of Engineers, Wilmington District, dated November 4, 1998.

14. The Permittee (and any successors and assigns) shall cause to be recorded in the Register of Deeds for Chatham County the "Declaration of Covenants and Restrictions – Riparian Areas," the draft form of which is attached as Exhibit C, for the purpose of preserving and protecting all jurisdictional streams and wetlands located on the project site, including parcels not currently owned by Permittee, in their natural state in perpetuity. The covenants and restrictions, as approved by the USACE, shall be recorded on any parcel within the project within thirty (30) days following the execution of this permit or within thirty (30) days following acquisition of the parcel in question, whichever is later. In addition, the covenants and restrictions shall be recorded on any parcel within the project, and a copy of the recorded covenants and restrictions provided to the USACE, prior to any impacts to waters and wetlands on the parcel and prior to the sale or conveyance of any lots, phases, or other property within the parcel. The permittee shall enforce the terms of the restrictions set forth in the deed, and, prior to conveyance of the property, shall take no action on the property described in the deed inconsistent with the terms thereof.

15. The permittee shall provide stream restoration in accordance with the plan entitled "Harpers Crossroads Stream Restoration Plan," dated September, 2005. The restoration site, which was authorized with a separate DA nationwide permit (USACE Action ID No. 200420489), has already been constructed. The as-built report dated June 12, 2006, states the total stream restoration generated by the project as 2,127 linear feet. Within 90 days of the USACE's determination that the Harpers Crossroads Stream Restoration Project has met the success criteria outlined in the "Harpers Crossroads Stream Restoration Plan," the permittee shall arrange for the transfer of the existing conservation easements to a third-party grantee, subject to approval by the USACE. The permittee shall also implement changes to the boundaries of the conservation area to reflect the project as constructed.



## Cultural Resources

16. If based on the report of the archaeological survey and testing conducted by Environmental Services, Inc. for Newland Communities and submitted on August 8, 2006 to the State Historic Preservation Office/Office of State Archaeology (HPO/OSA) pursuant to Section 106 of the National Historic Preservation Act as amended, either of the two archaeological sites that were tested (31CH823\*\* and 31CH824\*\*) are determined to be eligible for inclusion in the National Register of Historic Places, consultation with the HPO/OSA and the USACE will be undertaken to determine if any eligible sites will be affected by project activities.
17. If any eligible sites will be affected, consultation with the HPO/OSA and the USACE shall be undertaken to develop a Memorandum of Agreement outlining the measures to be undertaken to mitigate adverse effects.
18. The five cemeteries (31CH805\*\* - 31CH808\*\* and 31CH811\*\*) will be preserved in place and not affected by project activities. If it is determined at some future date that any of these cemeteries cannot be preserved, grave removal shall be undertaken in accordance with NCGS Chapter 65, Article 5.
19. Archaeological site 31CH809\*\* is not located within an area proposed for development or other ground disturbing activities and shall be preserved in place. If it is determined at some future date that the site cannot be preserved, investigations shall be undertaken in consultation with the HPO/OSA and USACE to determine its eligibility for inclusion in the National Register of Historic Places.
20. If 31CH809\*\* is determined to be eligible and it will be affected by project activities, consultation with the HPO/OSA and the USACE shall be undertaken either to amend the existing Memorandum of Agreement or develop one outlining the measures to be undertaken to mitigate adverse effects.