



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS
69 DARLINGTON AVENUE
WILMINGTON, NORTH CAROLINA 28403-1343

August 21, 2009

Regulatory Division

Action ID. 200121252

Mr. William S. Mumford
NNP – Briar Chapel, LLC
16 Windy Knoll Circle
Chapel Hill, North Carolina 27516

Dear Mr. Mumford:

Reference the Department of the Army (DA) permit issued on October 2, 2006, to Mitch Barron of Newland Communities for impacts associated with the Briar Chapel Development. Also reference the modification to this permit approved in December, 2007. This development is approximately 1,589 acres in size and is located west of US Highway 15-501, 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. The site contains several unnamed tributaries and adjacent wetlands of Pokeberry Creek and Wilkinson Creek, in the Cape Fear River Basin (8-Digit Cataloging Unit 03030002).

Permanent impacts authorized by this permit and the subsequent 2007 modification totaled 1,666 linear feet of stream channel and 0.4422 acre of wetland, and temporary impacts totaled 359 linear feet of stream channel and 0.156 acre of wetlands. Mitigation was implemented for the unavoidable impacts by: a) Payment into the North Carolina Ecosystem Enhancement Program for the restoration of 0.6655 acre of riparian wetlands; b) Restoration of 2,127 linear feet of stream channel at the Harpers Crossroads Mitigation Site; and c) On-site preservation of 59.3 acres of wetlands and 63,412 linear feet of stream channel.

Also reference your permit modification request received by the Corps on May 8, 2009. This modification was to address impact amounts and location changes associated with roadway crossings in and near the development. Also included within the requested modification were impacts associated with restoration to streams and wetlands as required to satisfy an existing on-site Clean Water Act violation. On May 22, 2009, a Public Notice was issued detailing this modification request which would bring total impacts associated with Briar Chapel to: 2,237 linear feet of permanent stream channel, 634 linear feet of temporary stream channel, 0.4374 acre of permanent wetland impact,

and 0.197 acres of temporary wetland impact. Please note the attached Tables 1, 2, and 3; originally created by your consultant S&EC, which describe the impact history by site number and amount. No additional mitigation was proposed due to the relatively large amount of preservation mitigation required within the original permit.

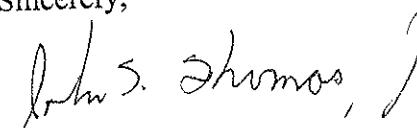
The Corps has completed the evaluation of your request and concurs with your request for a change in impacts associated with your referenced DA permit including the change to plans as requested. No additional mitigation is required for this modification.

Special condition 1 of your permit is hereby modified to read:

“All work authorized by this permit must be performed in strict compliance with the attached plans, Exhibit A, Exhibit E, and/or Exhibit F which are a part of this permit. These plans reflect the original proposal, Exhibit A; and the modifications as depicted within the January 26, and the revised June 7, 2007, proposals as shown in Exhibit E, and the modification request of May 8, 2009, as shown in Exhibit F. Only the attached modification plans reflect approved changes to the original plans, therefore any additional deviations from the original plans are not approved per this modification and any further modification to the plans must be approved by the US Army Corps of Engineers (USACE) prior to implementation. The temporary impacts as identified on Exhibit E shall be removed by May 1, 2008, or the project shall be considered non-compliant with this condition. In addition, the following time deadlines are hereby established for work considered authorized under this 2009 permit modification: all impacts, both temporary and permanent, as shown in the stream repair and stabilization document received with the modification application on May 8, 2009, must be completed prior to April 15, 2010; and all additional temporary impacts, not requested within the stream repair and stabilization document but requested and authorized under this 2009 modification, shall be removed within 30 days of the completion of each respective crossing. Proper documentation of permit compliance for this 2009 modification shall be submitted to the Corps of Engineers Regulatory Representative via email on or before April 15, 2010, or at the time of each temporary impact removal, respectively. ”

Please note that all other permit conditions and exhibits remain in effect as written. Should you have questions, contact Mr. Monte Matthews, Raleigh Regulatory Field Office at telephone (919) 554-4884, Extension 30.

Sincerely,


for/ Jefferson M. Ryscavage
Colonel, U.S. Army
District Commander

Attachments

Copy Furnished (w/o attachment)

Ms. Cyndi Karoly
Division of Water Quality
North Carolina Department of Environment
and Natural Resources
2321 Crabtree Boulevard, Suite 250
Raleigh, NC 27604

Copy Furnished (w/attachment)

Ms. Nicole Thomson
Soil & Environmental Consultants
11010 Raven Ridge Road
Raleigh, NC 27614



North Carolina Department of Environment and Natural Resources

Division of Water Quality
Coleen H. Sullins
Director

Beverly Eaves Perdue
Governor

Dee Freeman
Secretary

August 31, 2009



Mr. William S. Mumford
NNP – Briar Chapel, LLC
16 Windy Knoll Circle
Chapel Hill, NC 27516

Re: Briar Chapel, Chatham County
DWQ Project # 20050732, Ver. 13; USACE Action ID. No. 200121252
APPROVAL of 401 Water Quality Certification with Additional Conditions - MODIFICATION

Dear Mr. Mumford:

Attached hereto is a copy of Certification No. 3567 issued to Mr. William S. Mumford of NNP- Briar Chapel, LLC, Inc., dated August 31, 2009. **This Certification replaces the Certification issued to you on January 11, 2008, July 21, 2009, and July 24, 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

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
Nicole Thomson, S&EC, P.A., 11010 Raven Ridge Road, Raleigh, NC 27614

Filename: 050732Ver13BriarChapel(Chatham)401_IC_MOD2_Revised

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. William S. Mumford of NNP- Briar Chapel, LLC to fill 0.4374 acres of 404/wetland (permanent impact), 0.197 acres 404/wetland (temporary impact), 2,154 linear feet of perennial stream (permanent impact), 612 linear feet of perennial stream (temporary impact), 83 linear feet of intermittent stream (permanent impact), and 22 linear feet of intermittent stream (temporary impact), in the Cape Fear River Basin, to construct the Briar Chapel residential and mixed use development at the site. The site is located west of U.S. 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, pursuant to a permit application dated May 8, 2009, and received by the DWQ on May 8, 2009, by Public Notice issued by the USACE on May 22, 2009, and received by the DWQ on May 22, 2009, and by all additional correspondences received by the DWQ on May 20, 2009 and June 25, 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	0.4374 (acres) – permanent impact	Table 2, Application, and Public Notice
404/401 Wetlands	0.197 (acres) – temporary impact	Table 2, Application, and Public Notice
Stream (perennial)	2,154 (linear feet) – permanent impact	Table 2, Application, and Public Notice
Stream (perennial)	612 (linear feet) – temporary impact	Table 2, Application, and Public Notice
Stream (intermittent)	83 (linear feet) – permanent impact	Table 2, Application, and Public Notice
Stream (intermittent)	22 (linear feet) – temporary impact	Table 2, Application, and Public Notice

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.
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. William S. Mumford and NNP- Briar Chapel, 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. William S. Mumford and NNP- Briar Chapel, 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. William S. Mumford and NNP- Briar Chapel, 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/su/Forms_Documents.htm.

Mitigation:

8. Compensatory Mitigation

Compensatory stream mitigation shall be accomplished by using 2,127 linear feet of stream mitigation credit at the Harpers Crossroads stream mitigation site and the remaining 27 linear feet of required stream credit (10:1 ratio = 270 linear feet) from the 63,412 linear feet of available onsite stream preservation. 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 the US Army Corps of Engineers. These provisions should be explicitly reflected in the conservation easements, or similar mechanisms, written to satisfy the USACE.

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.

Type of Impact	Compensatory Mitigation Required	River and Sub-basin Number
Stream (perennial)	2,154 (linear feet)	Cape Fear/03030002

9. Stormwater Management Plan Implementation Procedures (No Further Approval Needed)

- The approved SMP must be constructed and operational before any permanent building or other structure is occupied at the site. If a development is phased, then the approved SMP for each future phase must be constructed and operational before any permanent building or other structure associated with that phase is occupied.
- The approved SMP as well as drainage patterns must be maintained in perpetuity.
- The SMP may not be modified without prior written authorization from the SMP approval authority. If the SMP falls under another state stormwater program, then a copy of the approval letter and the modified SMP must be submitted to the 401 Oversight/Express Unit prior to the commencement of the modifications.

10. Culvert Installation

All work in or adjacent to stream waters shall be conducted in a dry work area. Approved BMP measures from the most current version of NCDOT Construction and Maintenance Activities manual (http://www.ncdot.org/doh/operations/BMP_manual/download/BMP_Manual.pdf) such as sandbags, rock berms, cofferdams and other diversion structures shall be used to prevent excavation in flowing water.

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.

Culvert(s) shall not be installed in such a manner that will cause aggradation or erosion of the stream up or down stream of the culvert(s). Existing stream dimensions (including the cross section dimensions, pattern and longitudinal profile) shall be maintained above and below locations of each culvert.

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 disequilibrium 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.

The establishment of native, woody vegetation and other soft stream bank stabilization techniques must be used where practicable instead of rip rap or other bank hardening methods. If rip-rap is necessary, it shall not be placed in the stream bed, unless specifically approved by the Division of Water Quality.

Installation of culverts in wetlands must ensure continuity of water movement and be designed to adequately accommodate high water or flood conditions.

Upon completion of the project, the Applicant shall complete and return the enclosed "Certificate of Completion" form to notify NCDWQ when all work included in the §401 Certification has been completed. The responsible party shall complete the attached form and return it to the 401/Wetlands Unit of the NC Division of Water Quality upon completion of the project. *Please send photographs upstream and downstream of each culvert site to document correct installation along with the Certificate of Completion form.*

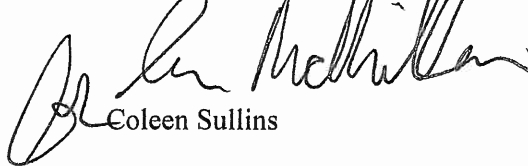
11. Certificate of Completion

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.

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 31st day of August 2009
DIVISION OF WATER QUALITY



Coleen Sullins

CHS/cbk/ijm

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