

U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT

FILE COPY

Action ID: 200900640

County: Nash

USGS Quad: Middlesex

GENERAL PERMIT (REGIONAL AND NATIONWIDE) VERIFICATION

Property Owner / Authorized Agent: Nash County

Address: Attn: Rosemary Dorsey
120 West Washington St.
Nashville, NC 27856

NCDOT Highway Division 4
Attn: Robert Lewis
509 Ward Blvd., P.O. Box 3165
Wilson, NC 27895

Telephone No.: 252-459-9800

Size and location of property (water body, road name/number, town, etc.): The project site is a proposed road for the Middlesex Corporate Center, bordered by US 264 to the North, US HWY 264 Alternate to the South, NC 231 to the West, and Turkey Creek to the East, in Middlesex, Nash County, North Carolina. Aquatic features on site drain to Turkey Creek in the Neuse River basin.

Description of projects area and activity: This permit verification allows for 260 linear feet of permanent stream channel impacts; 134 linear feet at crossing one, and 126 linear feet at crossing three; 24 linear feet of temporary stream channel impacts; 10 linear feet at crossing one, and 14 linear feet at crossing three; and 0.17 acre of permanent wetland impacts at crossing 2, for the placement of fill for the construction of a 10' wide gravel sales road, that will traverse throughout the property, in strict accordance with the revised plans submitted on November 25, 2009. This permit modification supersedes previous authorizations issued on July 29, and August 17, 2009. Mitigation is required for this proposal.

Applicable Law: Section 404 (Clean Water Act, 33 USC 1344)
 Section 10 (Rivers and Harbors Act, 33 USC 403)

Authorization: Regional General Permit Number: _____
Nationalwide Permit Number: 39

Your work is authorized by the above referenced permit provided it is accomplished in strict accordance with the attached conditions and your submitted plans. Any violation of the attached conditions or deviation from your submitted plans may subject the permittee to a stop work order, a restoration order and/or appropriate legal action.

This verification will remain valid until the expiration date identified below unless the nationwide authorization is modified, suspended or revoked. If, prior to the expiration date identified below, the nationwide permit authorization is reissued and/or modified, this verification will remain valid until the expiration date identified below, provided it complies with all requirements of the modified nationwide permit. If the nationwide permit authorization expires or is suspended, revoked, or is modified, such that the activity would no longer comply with the terms and conditions of the nationwide permit, activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon the nationwide permit, will remain authorized provided the activity is completed within twelve months of the date of the nationwide permit's expiration, modification or revocation, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend or revoke the authorization.

Activities subject to Section 404 (as indicated above) may also require an individual Section 401 Water Quality Certification. You should contact the NC Division of Water Quality (telephone (919) 733-1786) to determine Section 401 requirements.

For activities occurring within the twenty coastal counties subject to regulation under the Coastal Area Management Act (CAMA), prior to beginning work you must contact the N.C. Division of Coastal Management.

This Department of the Army verification does not relieve the permittee of the responsibility to obtain any other required Federal, State or local approvals/permits.

If there are any questions regarding this verification, any of the conditions of the Permit, or the Corps of Engineers regulatory program, please contact James Lastinger at telephone number 919-554-4884 extension 32.

Special Conditions:

1. Compensatory mitigation for the unavoidable impacts to 0.17 acre of herbaceous wetlands shall be accomplished at the Wiggins Mill Mitigation Site by debiting 0.17 acre of Riverine wetland Restoration and 0.68 acre of Riverine wetland enhancement from this site.
2. The permittee shall maintain the Wiggins Mill Mitigation site in its natural condition, as altered by the mitigation plan, in perpetuity. Except as authorized or required by the mitigation plan, prohibited activities on the mitigation property include, but are not limited to, filling; grading; excavating; earth moving of any kind; construction of roads, walkways, buildings signs, or any other structure; any activity that may alter the drainage patterns on the property; destruction, mowing, or other alteration of vegetation on the property; disposal or storage of any garbage trash, or other waste material. In addition, the permittee shall take no action, whether on or off the mitigation property, which will adversely impact the wetlands on the mitigation property.
3. Condition (2), above, runs with the land. The permittee shall not sell, lease, or otherwise convey any interest in the mitigation property without subjecting the property to legally enforceable restrictions on the use of the property, to ensure its preservation, approved in writing by the Wilmington District Corps of Engineers.
4. The permittee shall provide to the DE, within 30-days of final execution of this permit, an updated debit-ledger table showing all debit transactions that have occurred on this site including any adjustments that have been made in the amount of compensatory mitigation that is available on this site.
5. Due to the confirmed presence of Michaux's Sumac, *Rhus michauxii*, the applicant shall abide by all protective measures as agreed upon by the U.S Fish and Wildlife Service as described within the permit application and letter dated November 16, 2009. These include 1) Avoidance of the existing population; 2) Establish a 50-foot radius no-impact zone, and an additional 50-foot radius restricted zone will be utilized to protect the species in which NCDOT will perform initial vegetation control on the delineated population in order to improve habitat conditions; 3) The no-impact zone will be marked off with orange safety fencing or other appropriate measure during any construction activities on the site as well as permanent, clear marking of the area after construction is completed and 4) provide a restrictive covenants document. The applicant will provide the Corps with a map showing the location of items 1-3 listed above prior to impacts.
6. Please reference our website <http://www.saw.usace.army.mil/WETLANDS/index.html> concerning the necessary language for the conservation easement governing the preservation area as required as mitigation for the proposed impacts. Also reference the map received by the Corps of Engineers on November 25, 2009, showing the areas proposed for inclusion within the conservation easement. We (the Corps of Engineers) agree with the areas depicted on the November 25, 2009, map and require the following permit condition (pertaining to the conservation easement):
 - Permittee shall execute and cause to be recorded in the Nash County Register of Deeds the conservation easement as described in your application dated November 25, 2009, for the purpose of maintaining the conservation easement, as shown on the recorded plat (properly recorded and showing preservation areas depicted with metes and bounds), in their natural state in perpetuity, prior to the sale or conveyance of any lots or other property within the industrial Park. The holder of the conservation easement (North Carolina Division of Transportation) shall enforce the

terms of the conservation easement and, prior to conveyance of the property, shall take no action on the property described in the easement inconsistent with the terms thereof. The permittee shall provide a copy of the recorded conservation easement to the Corps of Engineers within 6 months of permit issuance date.

Corps Regulatory Official James Lastinger  Date: January 6, 2010

Expiration Date of Verification: January 6, 2012

The Wilmington District is committed to providing the highest level of support to the public. To help us ensure we continue to do so, please complete the attached customer Satisfaction Survey or visit <http://www.saw.usace.army.mil/WETLANDS/index.html> to complete the survey online.

Determination of Jurisdiction:

- Based on preliminary information, there appear to be waters of the US including wetlands within the above described project area. This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process (Reference 33 CFR Part 331).
- There are Navigable Waters of the United States within the above described project area subject to the permit requirements of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. Unless there is a change in the law or our published regulations. this determination may be relied upon for a period not to exceed five years from the date of this notification.
- There are waters of the US and/or wetlands within the above described project area subject to the permit requirements of Section 404 of the Clean Water Act (CWA)(33 USC § 1344). Unless there is a change in the law or our published regulations, this determination may be relied upon for a period not to exceed five years from the date of this notification.
- The jurisdictional areas within the above described project area have been identified under a previous action. Please reference jurisdictional determination issued _____. Action ID _____

Basis of Jurisdictional Determination: **Established OHWM and 1987 Corps Wetland Delineation Manual.**

Appeals Information (This information applies only to approved jurisdictional determinations.)

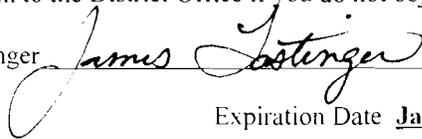
Attached to this verification is an approved jurisdictional determination. If you are not in agreement with that approved jurisdictional determination, you can make an administrative appeal under 33 CFR 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and request for appeal (RFA) form. If you request to appeal this determination you must submit a completed RFA form to the following address:

District Engineer, Wilmington Regulatory Division
Attn: Jean Manuele, Field Office Chief
Raleigh Regulatory Field Office
U.S. Army Corps of Engineers
3331 Heritage Trade Dr., suite 105
Wake Forest, NC 27587

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR part 331.5, and that it has been received by the District Office within 60 days of the date of the NAP. Should you decide to submit an RFA form. it must be received at the above address by **March 6, 2010.**

****It is not necessary to submit an RFA form to the District Office if you do not object to the determination in this correspondence.****

Corps Regulatory Official: James Lastinger



Date **January 6, 2010**

Expiration Date **January 6, 2015**

SURVEY PLATS, FIELD SKETCH, WETLAND DELINEATION FORMS, PROJECT PLANS, ETC., MUST BE ATTACHED TO THE FILE COPY OF THIS FORM, IF REQUIRED OR AVAILABLE.

Copy Furnished:
Stocks Engineering, PA
Attn: Mike Stocks
3344 Hillsborough St.
Raleigh, NC 27607

NC Department of Transportation, Highway Division 4
Attn: Robert Lewis
509 Ward Blvd.
P.O. Box 3165
Wilson, NC 27895

Action ID Number: SAW-2009-00640

County: Nash

Permittee: Nash County

Date Verification Issued: January 6, 2010

Project Manager: James Lastinger

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:

US ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT
RALEIGH REGULATORY FIELD OFFICE
3331 HERITAGE TRADE DRIVE, SUITE 105
WAKE FOREST, NORTH CAROLINA 27587

Please note that your permitted activity is subject to a compliance inspection by a U. S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and condition of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Nash County	File Number: SAW-2009-00640	Date: January 6, 2010
Attached is:		See Section below
<input type="checkbox"/> INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
<input type="checkbox"/> PROFFERED PERMIT (Standard Permit or Letter of permission)		B
<input type="checkbox"/> PERMIT DENIAL		C
<input checked="" type="checkbox"/> APPROVED JURISDICTIONAL DETERMINATION		D
<input type="checkbox"/> PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://www.usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the district engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
James Lastinger, Regulatory Specialist
Raleigh Regulatory Field Office
3331 Heritage Trade Dr., suite 105
Wake Forest, NC 27587

If you only have questions regarding the appeal process you may also contact:
Jean Manuele, Field Office Chief
Raleigh Regulatory Field Office
3331 Heritage Trade Dr., suite 105
Wake Forest, NC 27587

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.

Date:

Telephone number:

For appeals on Initial Proffered Permits and approved Jurisdictional Determinations send this form to:

District Engineer, Wilmington Regulatory Division, Attn: Jean Manuele, Field Office Chief, Raleigh Regulatory Field Office, 3331 Heritage Trade Dr., suite 105, Wake Forest, North Carolina 27587

For Permit denials and Proffered Permits send this form to:

Division Engineer, Commander, U.S. Army Engineer Division, South Atlantic, Attn: Mr. Mike Bell, Administrative Appeal Officer, CESAD-ET-CO-R, 60 Forsyth Street, Room 9M15, Atlanta, Georgia 30303-8801