



DEPARTMENT OF THE ARMY  
WILMINGTON DISTRICT, CORPS OF ENGINEERS

P.O. BOX 1890  
WILMINGTON, NORTH CAROLINA 28402-1890

IN REPLY REFER TO

July 16, 1998

Regulatory Branch

SUBJECT: Action ID 199820490, I-85 Widening, TIP No. I-2201F

William D. Gilmore, P.E., Manager  
Planning and Environmental Branch  
North Carolina Department of Transportation  
Division of Highways  
Post Office Box 25201  
Raleigh, North Carolina 27611-5201

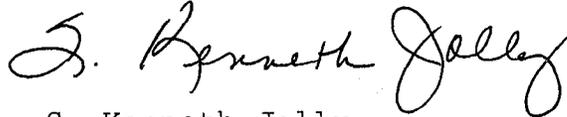
Dear Mr. Gilmore:

In accordance with your written request of February 2, 1998, and the resulting administrative record, enclosed are two copies of a Department of the Army permit to authorize the discharge of dredged and fill material, for construction of Section F of the I-40 Widening (T.I.P. No. I-2201), crossing South Buffalo Creek, unnamed tributaries, and adjacent wetlands, from west of Guilford College Road to east of Holden Road, west of Greensboro, in Guilford County, North Carolina.

You should acknowledge that you accept the terms and conditions of the enclosed permit by signing and dating each copy in the spaces provided ("Permittee" on page 3). Your signature, as permittee, shows that, as consideration for the issuance of this permit, you voluntarily accept and agree to comply with all of the terms and conditions of this permit. All pages of both copies of the signed permit with drawings should then be returned to this office for final authorization. A self-addressed envelope is enclosed for your convenience.

After the permit is authorized in this office, the original copy will be returned to you; the duplicate copy will be permanently retained in this office. Should you have questions, contact Mr. Eric Alsmeyer of my Raleigh Field Office regulatory staff at telephone (919) 876-8441, extension 23.

Sincerely,

A handwritten signature in cursive script that reads "S. Kenneth Jolly". The signature is written in dark ink and is positioned above the typed name.

S. Kenneth Jolly  
Manager, Raleigh Regulatory  
Field Office

Enclosures

DEPARTMENT OF THE ARMY PERMIT

North Carolina Department of Transportation

Permittee \_\_\_\_\_

199820490

Permit No. \_\_\_\_\_

CESAW-RG-R

Issuing Office \_\_\_\_\_

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 that office acting under the authority of the commanding officer.

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

Project Description:

Place fill material impacting a total of 1.74 acres of waters of the United States, including 0.96 acres of wetlands and 1,758 linear feet of stream, for construction of Section F of the I-40 Widening (T.I.P. No. I-2201), crossing South Buffalo Creek, unnamed tributaries, and adjacent wetlands.

Project Location:

From west of Guilford College Road to east of Holden Road, west of Greensboro, in Guilford County, North Carolina.

Permit Conditions:

General Conditions:

1. The time limit for completing the work authorized ends on December 31, 2001. 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 Condition 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 is eligible for listing in the National Register of Historic Places.

- 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 33 CFR 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 measures 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) NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (DATE)  
 WILLIAM D. GILMORE, P.E., MANAGER

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

\_\_\_\_\_  
 (DISTRICT ENGINEER) TERRY R. YOUNGBLUTH, COLONEL (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

a. All work authorized by this permit must be prepared in strict compliance with the attached plans, which are a part of this permit.

### SOUTH BUFFALO CREEK WETLANDS MITIGATION

b. The permittee shall implement the enclosed compensatory wetland mitigation plan entitled "South Buffalo Creek Wetlands Mitigation Plan," dated April 30, 1997, and the enclosed Addendum to the Plan, dated June 10, 1997, which are incorporated by reference, to the extent necessary to provide the mitigation described in condition c. below.

c. The permittee shall mitigate for 0.96 acres of unavoidable impacts to wetlands associated with this project with 0.96 acres of wetland restoration (2:1 ratio), and 3.36 acres of wetland preservation (7:1 ratio), for a total of 4.32 acres, at the South Buffalo Creek Mitigation Site.

d. NCDOT will survey the 4.32 acres of wetland restoration and preservation at the South Buffalo Creek Mitigation Site, and submit a copy of the survey to the District Engineer within 90 days after construction of the site is completed.

e. All site preparation activities at the South Buffalo Creek Wetlands Mitigation Site shall be completed by March 31, 1999. An "as built" plan, which depicts location of sample plots, number of individuals of each tree species within each sample plot, location of monitoring wells, final project elevations, and photographs shall be submitted to the District Engineer within 60 days of mitigation site completion.

f. The permittee shall convey the 4.32 acres of the South Buffalo Creek Wetlands Mitigation Site to the City of Greensboro within one year after monitoring shows that the site has been successful. The permittee and subsequent property owners shall maintain the South Buffalo Creek Wetlands Mitigation Site in its natural condition, as altered by work by the mitigation plan, in perpetuity. Prohibited activities within the mitigation areas specifically include, but are not limited to: the construction or placement of roads, walkways, buildings, signs, or structures of any kind (i.e., billboards, interior fences, etc.); filling, grading, excavation, grading, leveling, or any other earth moving

activity or activity that may alter the drainage patterns on the property; the cutting, mowing, destruction, removal, damage or other alteration of any vegetation; disposal or storage of any debris, trash, garbage, or other waste material; except as may be authorized by the mitigation plans. 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.

g. The permittee shall not sell or otherwise convey any interest in the properties used to satisfy mitigation requirements for this permit, to any third party, other than the City of Greensboro, without the express written consent of the Corps of Engineers. It is the intent of the Corps of Engineers and the permittee that the properties be conveyed to, or remain the property of, the City of Greensboro, which is willing to hold the areas in perpetuity for conservation purposes.

h. Any sale, lease or other conveyance of the 4.32 acres of the South Buffalo Creek Wetlands Mitigation Site, including the conveyance to the City of Greensboro, shall include restrictions on the use of the property as described in these conditions, which conditions shall be enforced by the North Carolina Department of Transportation.

i. The permittee shall record this permit, including a survey of the 4.32 acres of the mitigation property, in the Guilford County Register of Deeds, in such a manner that it appears in the chain of title for the mitigation property.

j. The permittee will monitor the site in August or September of each year, and document tree mortality and stress within the mitigation site and within the reference ecosystem. A minimum of seven 0.05 acre sample plots will be used in the restoration portion of the mitigation site, and a minimum of eight 0.05 acre sample plots will be used in the preservation portion of the mitigation site.

k. The permittee will monitor site hydrology through the use of monitoring wells on the wetland mitigation site and the reference ecosystem site. Hydrologic monitoring will occur during each growing season throughout the entire vegetative monitoring period (minimum of five years), and must document attainment of the site's hydrology success criteria (hydrology similar to the reference site over a full growing season).

1. The permittee will submit yearly mitigation monitoring reports within 60 calendar days of each assessment period for five years following final site manipulation. These reports will include, at a minimum, sample plot, well and rainfall data; photographs; and problems/resolution, and will be provided to both the Corps and the North Carolina Division of Water Quality.

#### STREAM MITIGATION

m. The permittee shall mitigate for 1,262 linear feet of unavoidable impacts to perennial stream channel associated with this project (496 linear feet will be relocated on-site) with 1,262 linear feet of stream restoration as described in the "Conceptual Stream Restoration Plans," dated July 10, 1997, for a tributary of North Buffalo Creek in Starmount Park.

n. The permittee shall submit a completed, final compensatory stream mitigation plan for the Starmount Park mitigation sites to the District Engineer, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection Agency, the North Carolina Division of Water Quality, and the North Carolina Wildlife Resources Commission, for a 15-day review (minimum). Construction of the stream mitigation site shall begin only after approval by the District Engineer of the final stream mitigation plan, and planting of the stream mitigation site will be completed by May 31, 1999. The permittee shall implement the final approved plan.

o. The permittee shall develop a monitoring plan to assess and insure complete stabilization of the mitigation stream segments. This monitoring plan, which must be included in the final mitigation plan discussed in Condition n. above, shall include adequate monitoring of planted vegetation for a minimum of one year after final planting, and appropriate remedial actions (e.g., replanting, streambank grading, etc.).

#### GENERAL MITIGATION

p. The permittee shall contact the Corps of Engineers, Raleigh Regulatory Field Office NCDOT Regulatory Project Manager, and provide that individual with the opportunity to attend the yearly mitigation monitoring efforts.

q. Failure to institute and carry out the details of special conditions a. - p., above, will result in a directive to cease all ongoing and permitted work within waters and/or

wetlands associated with I-2201F, or such other remedy as the District Engineer or his authorized representatives may seek.

#### OTHER CONDITIONS

r. Prior to commencing construction within jurisdictional waters of the United States, the permittee shall forward the latest version of project construction drawings to the Corps of Engineers, Raleigh Regulatory Field Office NCDOT Regulatory Project Manager. Half-size drawings are acceptable.

s. All stream relocations and stream restoration shall be constructed in accordance with the North Carolina Wildlife Resources Commission's (NCWRC) "Stream Relocation Guidelines." NCDOT shall consult with NCWRC on all stream relocations and restoration and implement all practicable recommendations in the design of specific site requirements for re-establishment of bank vegetation, and placement of meanders and habitat structures. Vegetation shall be used to the maximum extent practicable to stabilize banks, and riprap and other man-made structural measures shall be minimized.

t. The permittee shall schedule an onsite preconstruction meeting between their representatives, the contractor's representatives, and the Corps of Engineers, Raleigh Regulatory Field Office NCDOT Regulatory Project Manager, prior to any work within jurisdictional waters and wetlands to ensure that there is a mutual understanding of all of the terms and conditions contained within this Department of the Army Permit. The permittee shall notify the Corps of Engineers Project Manager a minimum of thirty (30) days in advance of the scheduled meeting in order to provide that individual with ample opportunity to schedule and participate in the required meeting.

u. The permittee and its contractors and/or agents shall not excavate, fill, or perform mechanized landclearing at any time in the construction or maintenance of this project within waters and/or wetlands, except as authorized by this permit, or any modification to this permit. There shall be no excavation from, or waste disposal into, jurisdictional wetlands or waters associated with this permit without appropriate modification of this permit, including appropriate compensatory mitigation. This prohibition applies to all borrow and fill activities connected with this project.

v. To ensure that all borrow and waste activities occur on high ground, except as authorized by this permit, the permittee shall require its contractors and/or agents to identify all areas to be used to borrow material, or to dispose of dredged, fill, or waste material. The permittee shall ensure that all such areas comply with the preceding condition (u.) of this permit, and shall require and maintain documentation of the location and characteristics of all borrow and disposal sites associated with this project. This information will include data regarding soils, vegetation and hydrology sufficient to clearly demonstrate compliance with the preceding condition (u.). All information will be available to the Corps of Engineers upon request.

w. 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.

x. The permittee shall comply with the conditions specified in the water quality certification, No. 3192, issued by the North Carolina Division of Water Quality on May 26, 1998.

y. The permittee shall use appropriate sediment and erosion control practices which equal or exceed those outlined in the most recent version of the "North Carolina Sediment and Erosion Control Planning and Design Manual" to minimize siltation impacts and to prevent turbidity levels greater than 50 NTU's in all streams, and 25 NTU's in all lakes.

z. The permittee shall remove all sediment and erosion control measures placed in wetlands or waters, and restore natural grades in those areas, after the North Carolina Division of Land Resources has released the project.

aa. The permittee shall take measures to prevent live or fresh concrete from coming into contact with any surface waters until the concrete has hardened.

bb. If the permittee discovers any previously unknown historic or archeological remains while accomplishing the authorized work, he will immediately notify the Wilmington District Engineer who will initiate the required State/Federal coordination.

cc. No excavated or fill material will be placed at any time in waters or wetlands outside the permitted construction areas, nor will it be placed in any location or in any manner so as to impair surface water flow into or out of any wetland area.

dd. The permittee will maintain the authorized work in good condition and in conformance with the terms and conditions of this permit. The permittee is not relieved of this requirement if he abandons the permitted activity without transferring it to a third party.

ee. All fill material will be clean and free of any pollutants except in trace quantities. Metal products, organic materials, or unsightly debris will not be used.

ff. This Department of the Army permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.

gg. This permit does not grant any property rights or exclusive privileges.

hh. In issuing this permit, the Federal Government does not assume any liability for:

1. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
2. Damages to the permitted project or uses thereof as a result of current or future Federal activities initiated on behalf of the general public.
3. Damages to other permitted or unpermitted activities or structures caused by the authorized activity.
4. Design and construction deficiencies associated with the permitted work.
5. Damage claims associated with any future modification, suspension, or revocation of this permit.