



DEPARTMENT OF THE ARMY
WILMINGTON DISTRICT, CORPS OF ENGINEERS

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



IN REPLY REFER TO

April 20, 1999

Regulatory Division

Action ID. 199821189 (TIP No. R-0525G) and Nationwide Permit
Number 26 (Headwaters and Isolated Waters)

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:

Reference your application of January 20, 1999, for Department of the Army authorization to discharge fill material within waters of the United States, impacting a total of 1.88 acres of wetlands, and 36 linear feet of stream, adjacent to, and above the headwaters of, Whiteoak Swamp, for construction of an interchange at the intersection of US 264 and NC 222, north of Saratoga, in Wilson County, North Carolina (TIP No. R-0525G).

For the purposes of the Corps of Engineers' Regulatory Program, the "December 13, 1996 Federal Register, Final Notice of Issuance, Reissuance, and Modification of Nationwide Permits (61 FR 65874)" listed nationwide permits. Authorization was provided, pursuant to Section 404 of the Clean Water Act, for discharges of dredged or fill material into headwaters and isolated waters (Nationwide General Permit 26).

Your work, impacting 1.88 acres of wetlands and 36 linear feet of stream, is authorized by this nationwide permit provided it is accomplished in strict accordance with your submitted plans, the enclosed general and special conditions, and provided you receive a Section 401 water quality certification from the North Carolina Division of Environmental Management. You should contact Mr. John Dorney, telephone (919) 733-1786, regarding water quality certification. This nationwide permit does not relieve you of the responsibility to obtain other required State or local approvals.

This verification is valid until the nationwide permit expires or for two years from the date of this letter, whichever comes first. This nationwide permit is currently scheduled to expire on September 15, 1999, as announced in the October 14, 1998, issue of the Federal Register (63 FR 55095 - 55099). If the nationwide permit authorization does expire or is suspended or 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 or are under contract to commence, in reliance upon the nationwide permit, will remain authorized. This is provided the activity is completed within twelve months of the date of the nationwide permit's expiration, modification or revocation.

Please note that this verification does not include impacts to waters of the United States from any on-site detours, borrow site use, spoil disposal, construction access, or bridge demolition.

Questions or comments may be addressed to me, at telephone (919) 876-8441, extension 23.

Sincerely,



Eric C. Alsmeyer
Regulatory Project Manager

Enclosures

Copy Furnished (with Special Conditions enclosure only):

Mr. Roy Shelton
Federal Highway Administration
310 New Bern Ave., Rm 410
Raleigh, North Carolina 27601-1442

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.

b. The permittee shall mitigate for 1.88 acres of unavoidable impacts to wetlands for the entire project, as described below (3.76 acres of wetland mitigation at the Gurley site in Greene County).

GURLEY WETLANDS MITIGATION

c. The permittee shall continue implementation of the compensatory wetland mitigation plan entitled "Wetland Mitigation Plan, Gurley Site, Greene County, North Carolina", dated March 1998, to provide the mitigation described in condition d. below.

d. The permittee shall mitigate for 1.88 acres of unavoidable impacts to wetlands associated with this project with 3.76 acres of non-riverine restoration at the Gurley Mitigation Site.

e. NCDOT will do a boundary survey of the 3.76 acres of wetland mitigation for this project at the Gurley Mitigation Site, and submit a copy of the survey to the District Engineer within 90 days of the date of this permit.

f. All site preparation activities at the Gurley Wetlands Mitigation Site have been completed. An "as built" plan, which describes the completed mitigation project, including variations from the original plan, 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 the date of this permit.

g. The permittee and subsequent property owners shall maintain the Gurley Wetlands Mitigation Site in its natural condition, as altered by work in 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, 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 or subsequent modifications which are approved by the Corps of Engineers. 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.

h. The permittee shall make every effort to convey the 3.76 acres of the Gurley site property to a nonprofit conservation organization or a natural resource agency that is willing to hold the areas in perpetuity for conservation purposes, and which is acceptable to the Corps of Engineers. The annual monitoring reports will include the status of the conveyance efforts.

i. 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, without the express written consent of the Corps of Engineers.

j. Any sale, lease, or other conveyance of the 3.76 mitigation acres of the Gurley Site 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.

k. The permittee shall record this permit, including a survey of the 3.76 acres of the mitigation property, in the Greene County Register of Deeds, in such a manner that it appears in the chain of title for the mitigation property.

MITIGATION MONITORING

l. The permittee will monitor the site vegetation between August 1 and November 30, inclusively, of each year, and document plant mortality and stress within the mitigation site. A minimum of six 0.05 acre sample plots, and five transects will be used.

The permittee will continue monitoring of the planting areas annually until all respective performance criteria are met, as described below.

m. Performance criteria for tree planting areas will be met if sample plots demonstrate that for each of the first three complete years of monitoring, 320 target-species trees per acre have survived, such that at the end of three years, 320 three-year old target-species trees per acre have survived on the site, and, in years four and five, 288 and 260 trees per acre, respectively, have survived on the site, such that at the end of year five, 260 five-year old target-species trees per acre have survived on the site.

n. If for any monitoring year, vegetation survival is not favorable, as determined by the Corps of Engineers, any remedial action required by the Corps of Engineers will be performed, the site will be replanted, and the five-year monitoring period will begin again with year one.

o. Hydrology in the non-riverine restoration area will be monitored through the use of monitoring wells during each growing season for the first five years of the vegetative monitoring, or until performance criteria have been met, whichever occurs later. A minimum of nine wells will be used on the total site.

p. To meet the hydrology success criteria, the monitoring well data within the non-riverine restoration area must show that for each normal precipitation year within the monitoring period, the restoration site has been inundated or saturated within the upper 12 inches of the soil for a minimum of 5% of the growing season (12 consecutive days). WETS tables for Greene County will be utilized to determine normal precipitation years.

q. If there are no normal precipitation years during the first five years of monitoring, to meet performance criteria, the permittee will continue to monitor hydrology on the site until it shows that the site has been inundated or saturated as described above during a normal precipitation year.

r. In the alternative, and at the Corps' discretion, a site may be found to meet the hydrology performance criteria on the basis of comparison of monitoring data taken from the site with monitoring data taken from an established jurisdictional mitigation reference site approved by the Corps. The Corps retains the discretion to find that the hydrology criteria are met if such monitoring data from the mitigation site and the reference site are substantially the same. This finding by the Corps may be made during years with or without normal rainfall.

s. In the event there are years of normal precipitation during the monitoring period, and the data for that year do not show that the site has been inundated or saturated within the upper 12 inches of the soil for a minimum of 5% of the growing season (12 consecutive days) during a normal precipitation year, the Corps may require remedial action. The permittee shall perform such required remedial action, and continue to monitor hydrology on the site until it displays that the site has been inundated or saturated as described above, during a normal precipitation year.

t. 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, including a location key; the status of the conveyance efforts; and problems/resolution; and will be provided to both the Corps and the North Carolina Division of Water Quality.

GENERAL MITIGATION

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

v. Failure to institute and carry out the details of special conditions a. - u., above, will result in a directive to cease all ongoing and permitted work within waters and/or wetlands associated with this project, or such other remedy as the District Engineer or his authorized representatives may seek.

State of North Carolina
Department of Environment
and Natural Resources
Division of Water Quality

James B. Hunt, Jr., Governor
Wayne McDevitt, Secretary
Kerr T. Stevens, Director



April 29, 1999
Wilson County
DWQ Project # 990080
TIP No. R-0525G

APPROVAL of 401 Water Quality Certification

Mr. William D. Gilmore, P.E., Manager
Planning and Environmental Branch
North Carolina Department of Transportation
P.O. Box 25201
Raleigh, NC, 27611-5201

Dear Mr. Gilmore:

You have our approval, in accordance with the attached conditions and those listed below, to construct the interchange at the intersection of US 264 and NC 222 in Wilson County. The project can be constructed as you described in your application dated 20 January 1999 (received 21 January 1999). After reviewing your application, we have decided that this fill is covered by General Water Quality Certification Number 3108. This certification is issued in conjunction with the Nationwide Permit Number 26 upon the Corps of Engineers issuance. In addition, you should obtain all other federal, state or local permits before proceeding with your project, including (but not limited to) Sediment and Erosion Control, Non-Discharge and Water Supply Watershed regulations. This approval will expire with the accompanying 404 permit unless otherwise specified in the General Certification.

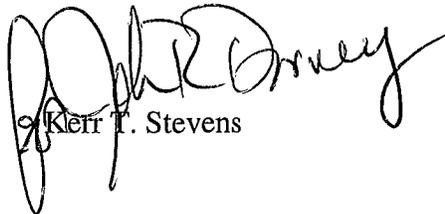
This approval is only valid for the purpose and design that you described in your application. If modifications to the project occur, you must notify us and submit a new permit application. If the property is sold, the new owner must be given a copy of this Certification and approval letter and is thereby responsible for complying with all conditions. If total wetland fills for this project (now or in the future) exceed one acre, compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). For this approval to be valid, you must follow the conditions listed in the attached certification.

Using a mitigation ratio of 2:1 for the proposed project, 3.76 acres of wetland mitigation will be required for the proposed 1.58 acres of impact. We understand that you have chosen to fulfill the mitigation requirement by debiting the Gurley Mitigation Site in Greene County. You have informed us that the Corps of Engineers has agreed to accept this method of mitigation. In accordance with 15A NCAC 2H.0506(h), this debit will satisfy our compensatory mitigation requirements.

If you do not accept any of the conditions of this certification, you may ask for an adjudicatory hearing. You must act within 60 days of the date that you receive this letter. To ask for a hearing, send a written petition that conforms to Chapter 150B of the North Carolina General Statutes to the Office of Administrative Hearings, P.O. Box 27447, Raleigh, N.C. 27611-7447. This certification and its conditions are final and binding unless you ask for a hearing.

This letter completes the review of the Division of Water Quality under Section 401 of the Clean Water Act. If you have any questions, please telephone John Dorney or John Hennessy at 919-733-1786.

Sincerely,



Kerr T. Stevens

Attachment

cc: Wilmington District Corps of Engineers
Corps of Engineers Raleigh Field Office
Raleigh DWQ Regional Office
Central Files

990080