



ROY COOPER

Governor

MICHAEL S. REGAN

Secretary

S. JAY ZIMMERMAN

Director

February 3, 2017

DWR Project # 05-0732 v37
Chatham County

NNP Briar Chapel, LLC
Attn: Mr. Bill Mumford
1312 Briar Chapel Parkway
Chapel Hill, NC 27515

Re: **APPROVAL of 401 Water Quality Certification with Additional Conditions -
MODIFICATION**
Briar Chapel
USACE Action ID. No. SAW-2001-21252

Dear Mr. Mumford:

Attached hereto is a copy of Certification No. 3567 issued to Mr. Bill Mumford of NNP Briar Chapel, LLC, Inc., dated February 3, 2017. **This Certification replaces the Certifications issued to you on May 9, 2006, January 11, 2008, July 21, 2009, July 24, 2009 and August 31, 2009.** This modification was requested by the applicant to authorize additional impacts V through Z, reduced the amount of previously approved impacts based on as-built measurements, and remove a condition to monitoring surface water and groundwater. Please note that you should get any other federal, state or local permits before proceeding with the subject project, including those required by (but not limited to) Sediment and Erosion Control, Non-Discharge, and Water Supply Watershed regulations.

This approval and its conditions are final and binding unless contested. This Certification can be contested as provided in General Statute 150B by filing a written petition for an administrative hearing to the Office of Administrative Hearings (hereby known as OAH) **within sixty (60) calendar days.**

A petition form may be obtained from the OAH at <http://www.ncoah.com/> or by calling the OAH Clerk's Office at (919) 431-3000 for information. A petition is considered filed when the original and one (1) copy along with any applicable OAH filing fee is received in the OAH during normal office hours (Monday through Friday between 8:00am and 5:00pm, excluding official state holidays).

The petition may be faxed to the OAH at (919) 431-3100, provided the original and one copy of the petition along with any applicable OAH filing fee is received by the OAH within five (5) business days following the faxed transmission.

Mailing address for the OAH:

If sending via US Postal Service:

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, NC 27699-6714

If sending via delivery service (UPS, FedEx, etc):

Office of Administrative Hearings
1711 New Hope Church Road
Raleigh, NC 27609-6285

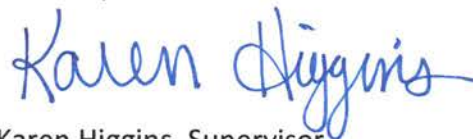
One (1) copy of the petition must also be served to Department of Environmental Quality:

Sam M. Hayes, General Counsel
Department of Environmental Quality
1601 Mail Service Center
Raleigh, NC 27699-1601

Unless such a petition is filed, this Certification shall be final and binding.

This certification completes the review of the Division under section 401 of the Clean Water Act and 15A NCAC 02H .0500. Contact me at 919-807-6360 or karen.higgins@ncdenr.gov or Jennifer Burdette at 919-807-6364 or jennifer.burdette@ncdenr.gov if you have any questions or concerns.

Sincerely,



Karen Higgins, Supervisor
401 & Buffer Permitting Branch

cc: Chris Huysman, Wetlands & Waters, Inc., 170 Dew Drop Road, Sparta, NC 28675
USACE Raleigh Regulatory Field Office
Todd Bowers, EPA, Sam Nunn Federal Center, 61 Forsyth Street SW, Atlanta, GA 30303
DWR RRO 401 file
DWR 401 & Buffer Permitting Branch file

NORTH CAROLINA 401 WATER QUALITY CERTIFICATION

CERTIFICATION #3567 is issued in conformity with the requirements of Section 401, Public Laws 92-500 and 95-217 of the United States and subject to North Carolina’s Regulations in 15A NCAC 02H .0500, to Mr. Bill Mumford and NNP Briar Chapel, LLC, who have authorization for the impacts listed below, as described within the original application received by the N.C. Division of Water Resources (Division) on June 17, 2005, by Public Notice issued by the U. S. Army Corps of Engineers (Corps) on June 14, 2005 and subsequent information on December 12, 2005 and February 24, 2006; the modification request received by the Division on June 7, 2007, by Public Notice issued by the Corps on June 7, 2007, and subsequent information on October 8, 2007, December 7, 2007 and January 11, 2008; the modification request received by the Division on May 8 , 2009, by Public Notice issued by the Corps on May 22, 2009, and subsequent information on received by the Division on May 20, 2009 and June 25, 2009; and the modification request received by the Division on December 8, 2016, by Public Notice issued by the Corps on December 5, 2016, and subsequent information received on January 23, 2016.

The State of North Carolina certifies that this activity will not violate the applicable portions of Sections 301, 302, 303, 306, 307 of the Public Laws 92-500 and PL 95-217 if conducted in accordance with the application, the supporting documentation, and conditions hereinafter set forth.

This approval requires you to follow the conditions listed in the certification below.

Conditions of Certification:

1. Impacts Approved

The following impacts are hereby approved provided that all of the conditions of the Certification are met. No other impacts are approved, including incidental impacts. [15A NCAC 02B .0506(b) & (c)]

Type of Impact ¹	Amount Approved (units) Permanent	Amount Approved (units) Temporary
	Stream	
Site A	4 linear feet	0 linear feet
Site B	166 linear feet	0 linear feet
Site D	181 linear feet	0 linear feet
Site E	84 linear feet	0 linear feet
Site F	213 linear feet	0 linear feet
Site G	296 linear feet	0 linear feet
Site H	257 linear feet	0 linear feet
Site I - intermittent	83 linear feet	0 linear feet

Type of Impact ¹	Amount Approved (units) Permanent	Amount Approved (units) Temporary
Site M	310 linear feet	0 linear feet
Site O	148 linear feet	0 linear feet
Site S	58 linear feet	0 linear feet
Site T	36 linear feet	0 linear feet
Site U	134 linear feet	0 linear feet
Site V	112 linear feet	0 linear feet
Site Y	135 linear feet	0 linear feet
Site Z	130 linear feet	0 linear feet
Utility Crossing 4	0 linear feet	41 linear feet
Utility Crossing 5	0 linear feet	50 linear feet
Utility Crossing 6	0 linear feet	43 linear feet
Intermittent Stream Total	83 linear feet	0 linear feet
Perennial Stream Total	2,264 linear feet	134 linear feet
Total Stream	2,347 linear feet	134 linear feet
404/401 Wetlands		
Site A	0.0372 acres	0 acres
Site B	0.0018 acres	0 acres
Site D	0.0282 acres	0 acres
Site E	0.0065 acres	0 acres
Site G	0.0095 acres	0 acres
Site I	0.0003 acres	0 acres
Site N	0.3449 acres	0 acres
Site W	0.0051 acres	0 acres
Site X	0.0055 acres	0 acres
Total 404/401 Wetlands	0.4390 acres	0 acres

1 Stream impacts are perennial unless otherwise noted.

2. 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 137 linear feet of required stream credit (10:1 ratio = 13,700 linear feet) from the 63,412 linear feet of available onsite stream preservation. These mitigation efforts shall be protected through use of three separate Declarations of Covenants and Restrictions – Riparian Areas recorded with the Chatham County Register of Deeds (DB 1371, Page 1174; DB 1372, Page 226; and DB 1291, Page 731).

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

3. Stormwater Management Plan

A final, written stormwater management plan for each future phase shall be submitted to the DWR 401 & Buffer Permitting Branch (1617 Mail Service Center, Raleigh, NC 27699-1617). The stormwater management plan (SMP) shall be designed to treat the runoff from the entire built upon area in the phase in accordance with current 401 Stormwater Requirements and BMP Manual on the date of the submittal. The SMP shall be approved by the Division before any land disturbance associated with that phase may occur. Before any future permanent building or other structure is occupied at the site, the corresponding SMP as approved by the Division shall be constructed and operational. [15A NCAC 02H .0506(b)(5)]

4. Reclaimed Water Generation, Conjunctive Reclaimed Water Utilization, Non-Conjunctive Reclaimed Water Utilization, and Wastewater Irrigation System Permit

Full compliance with Permit WQ0028552, issued by the Non-Discharge Branch of the Division, is required.

5. Water Quality Monitoring

Water quality monitoring completed by Eagle Resources from 2007 to 2015 have not shown water quality impacts from the project. Water quality monitoring required by Condition #11 of the 401 Water Quality Certification issued on May 9, 2006 is no longer required.

6. 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 application for this project. 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. Approved plans and specifications for this project are incorporated by reference and are enforceable parts of this certification. [15A NCAC 02H .0501 and .0502]

7. Sediment and Erosion Control

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. If applicable, the project must comply with the specific conditions and requirements of the NPDES Construction Stormwater Permit issued to the site and the following requirements [15A NCAC 02H .0506(b)(3) and (c)(3)]:

- a. 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.
- b. For borrow pit sites, the erosion and sediment control measures must be designed, installed, operated, and maintained in accordance with the most recent version of the *North Carolina Surface Mining Manual*.
- c. Reclamation measures and implementation must comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act and the Mining Act of 1971.
- d. Sufficient materials required for stabilization and/or repair of erosion control measures and stormwater routing and treatment shall be on site at all times.

8. Sediment and erosion control measures shall not be placed in wetlands or waters. Exceptions to this condition require application submittal to and written approval by the Division. If placement of sediment and erosion control devices in wetlands and waters is unavoidable, then design and placement of temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands, stream beds, or banks, adjacent to or upstream and downstream 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 Energy, Mineral and Land Resources (DEMLR) or locally delegated program has released the specific area within the project. [15A NCAC 02H .0501 and .0502]

9. Construction Stormwater Permit NCG010000

An NPDES Construction Stormwater Permit is required for construction projects that disturb one (1) or more acres of land. This Permit allows stormwater to be discharged during land disturbing construction activities as stipulated in the conditions of the permit. If your project is covered by this permit, full compliance with permit conditions including the erosion & sedimentation control plan, inspections and maintenance, self-monitoring, record keeping and reporting requirements is required. A copy of the general permit (NCG010000), inspection log sheets, and other information may be found at:

<http://portal.ncdenr.org/web/wq/ws/su/npdessw#tab-w>. [15A NCAC 02H .0506(b)(5) and (c)(5)]

10. Work in the Dry

All work in or adjacent to stream waters shall be conducted so that the flowing stream does not come in contact with the disturbed area. Approved best management practices from the most current version of the NC Sediment and Erosion Control Manual, or the NC DOT Construction and Maintenance Activities Manual, such as sandbags, rock berms, cofferdams, and other diversion structures shall be used to minimize excavation in flowing water. [15A NCAC 02H .0506(b)(3) and (c)(3)]

11. If concrete is used during the construction, then all necessary measures shall be taken to prevent direct contact between uncured or curing concrete and waters of the state. Water that inadvertently contacts uncured concrete shall not be discharged to waters of the state due to the potential for elevated pH and possible aquatic life/fish kills. [15A NCAC 02B .0200]

12. Placement of Culverts and Other Structures in Waters and Wetlands [15A NCAC 02H .0506(b)(2) and (c)(2)]

Culverts required for this project shall be installed in such a manner that the original stream profiles are not altered and to allow for aquatic life movement during low flows. Existing stream dimensions (including the cross section dimensions, pattern and longitudinal profile) must be maintained above and below locations of each culvert.

Placement of culverts and other structures in waters, streams must be below the elevation of the streambed by one (1) 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.

Installation of culverts in wetlands must ensure continuity of water movement and be designed to adequately accommodate high water or flood conditions. Additionally, when roadways, causeways, or other fill projects are constructed across FEMA-designated floodways or wetlands, openings such as culverts or bridges must be provided to maintain the natural hydrology of the system as well as prevent constriction of the floodway that may result in destabilization of streams or wetlands.

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.

13. All temporary fill and culverts shall be removed and the impacted area returned to natural conditions, within 60 days of the determination that the temporary impact is no longer necessary. The impacted areas shall be restored to original grade, including each stream's original cross sectional dimensions, plan form pattern, and longitudinal bed and bed profile,

and the various sites shall be stabilized with natural woody vegetation (except approved maintenance areas) and restored to prevent erosion. [15A NCAC 02H .0506(b)(2) and (c)(2)]

14. All temporary pipes/culverts/riprap pads etc, shall be installed in all streams as outlined in the most recent edition of the North Carolina Sediment and Erosion Control Planning and Design Manual so as not to restrict stream flow or cause dis-equilibrium. [15A NCAC 02H .0506(b)(2) and (c)(2)]
15. Any riprap required for proper culvert placement, stream stabilization, or restoration of temporarily disturbed areas shall be restricted to the area directly impacted by the approved construction activity. All riprap shall be buried and/or "keyed in" such that the original stream elevation and streambank contours are restored and maintained. Placement of riprap or other approved materials shall not result in de-stabilization of the stream bed or banks upstream or downstream of the area. [15A NCAC 02H .0506(b)(2)]
16. Any riprap used for stream stabilization shall be of a size and density to prevent movement by wave action, current action, or stream flows and consist of clean rock or masonry material free of debris or toxic pollutants. Riprap shall not be installed in the streambed except in specific areas required for velocity control and to ensure integrity of bank stabilization measures. [15A NCAC 02H .0506(b)(2)]
17. A one-time application of fertilizer to re-establish vegetation is allowed in disturbed areas including riparian buffers, but is restricted to no closer than 10 feet from top of bank of streams. Any fertilizer application must comply with all other Federal, State and Local regulations. [15A NCAC 02B .0231]
18. Deed notifications or similar mechanisms shall be placed on all retained jurisdictional wetlands, waters and protective buffers within the project boundaries in order to assure compliance for future wetland, water and buffer impact. These mechanisms shall be put in place at the time of recording of the property, or of individual lots, whichever is appropriate. A sample deed notification can be downloaded from the 401 & Buffer Permitting Branch website at <http://portal.ncdenr.org/web/wq/swp/ws/401/certsandpermits/apply/forms>. The text of the sample deed notification may be modified as appropriate to suit to this project. Documentation of deed notifications shall be provided to the Division upon request. [15A NCAC 02H .0501 and .0502]
19. This Certification does not relieve the applicant of the responsibility to obtain all other required Federal, State, or Local approvals.

20. Continuing Compliance

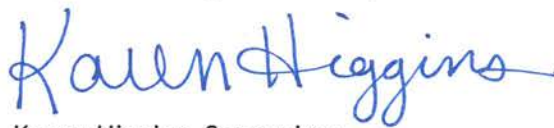
Mr. Bill Mumford and NNP Briar Chapel, LLC shall conduct construction activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with section 303(d) of the Clean Water Act) and any other appropriate requirements of State and Federal law. [15A NCAC 02B .0200] 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. Before modifying the Certification, the Division shall notify Mr. Bill Mumford and NNP Briar Chapel, LLC and the U.S. Army Corps of Engineers, provide public notice in accordance with 15A NCAC 02H .0503 and provide opportunity for public hearing in accordance with 15A NCAC 02H .0504. Any new or revised conditions shall be provided to Mr. Bill Mumford and NNP Briar Chapel, LLC in writing, shall be provided to the U.S. 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.

21. This approval is for the purpose and design described in your application and as described in the Public Notice. The plans and specifications for this project are incorporated by reference and are an enforceable part of the Certification. If you change your project, you must notify the Division and you may be required to submit a new application package with the appropriate fee. If the property is sold, the new owner must be given a copy of this Certification and is responsible for complying with all conditions. Any new owner must notify the Division and request the Certification be issued in their name. [15A NCAC 02H .0501 and .0502]
22. The applicant and/or authorized agent shall provide a completed Certificate of Completion Form to the DWR 401 & Buffer Permitting Branch within ten days of project completion (available at: <http://portal.ncdenr.org/web/wq/swp/ws/401/certsandpermits/apply/forms>). [15A NCAC 02H .0502(f)]
23. This certification grants permission to the director, an authorized representative of the Director, or DEQ staff, upon the presentation of proper credentials, to enter the property during normal business hours. [15A NCAC 02H .0502(e)]

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. The conditions in effect on the date of issuance shall remain in effect for the life of the project, regardless of the expiration date of this Certification. [15A NCAC 02H .0507(d)(2) and 15A NCAC 02H .0506]

Non-compliance with or violation of the conditions herein set forth may result in revocation of this Certification and may also result in criminal and/or civil penalties.

This the 3rd day of February 2017



Karen Higgins, Supervisor
401 & Buffer Permitting Branch

KAH/jab

3567