

Commerce Department
Planning Division

Cabarrus County Government

Cabarrus County Planning and Zoning Commission Meeting
March 19, 2009
7:00 P.M.
Board of Commissioners Chamber
Cabarrus County Governmental Center

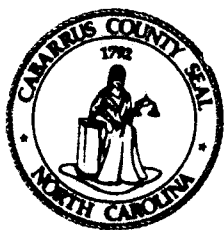
Agenda

1. Roll Call
2. Approval of Minutes
3. New Business – Board of Adjustment Function:

Conditional Use Permit Case #- CUSE2008-00010 - Cabarrus County Water and Sewer Authority (WSACC)

Request: The applicant is requesting permission to allow construction of a pump station at 8122 Lower Rocky River Road, Concord, N.C. 28027 (PIN# 5526397227).

4. Directors Report
5. Adjournment



Cabarrus County Zoning Department

CUSE2008-00010

March 19th, 2009

Revised Findings of Fact

Applicant- Cabarrus County Water & Sewer Authority
WSACC
232 Davidson Hwy
Concord, NC 28025

Property Owner- Cabarrus County Water & Sewer Authority
WSACC
232 Davidson Hwy
Concord, NC 28025

Property Location- 8112 Lower Rocky River Road
Concord, NC 28025

PIN- 5526397227

Property Zoning- CR Countryside Residential

Property Size- 3.4 Acres

Request- The applicant is requesting to a Conditional Use Permit that will allow the construction of a Sewer Pump Station.

<u>Final Decision</u>		
Motion	To Grant	To Deny
Vote	For	Against
	_____	_____
Granted		Denied

Additional Facts-

1. The applicant has provided documentation compliant with Section 8-3, Petitioning for a Conditional Use.
2. The applicant has submitted a complete application which includes the "Findings of Fact" sheet along with a site plan showing the proposed Sewer Pump Station.
3. A Public hearing notice has been published in the Independent Tribune on March 5th and 12th, 2009.
4. Adjacent property owners have been notified by US Mail.
5. A sign has been placed on the property stating the time, date, and location of the public hearing.
6. Site plan review and approval will be required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements.
7. Additional agencies are part of this review process. Comments from each respective agency are provided for your review.

8. **Proposed conditions** of approval are shown below.

Nonresidential Development Agency Review Comments and Conditions:

Zoning Review- Conditions

Approved with Conditions

1. Site plan review and approval will be required subsequent to Board of Adjustment approval to ensure compliance with all applicable development requirements.

Robbie Foxx

Cabarrus County Zoning Division

3/06/2009 12:36 PM

Fire Review- Conditions

Approved with Conditions

1. Gate access will need to be 20 feet wide. Two sets of fire alarm plans will need to be submitted with device cut sheets. Fire department knox box will be needed at gate to hold gate code.

Steve Langer, Cabarrus County Fire Marshal

12/28/2008 8:57 PM

Health Alliance Review- No Conditions

Approved

David Troutman

Cabarrus County Health Alliance

2/12/2009 12:36 PM

Soil-Water Conservation Review- No Conditions

Approved

Dennis Testerman

Cabarrus County Soil and Water Conservation

1/21/2009 9:28 AM

Erosion Control Review- No Conditions

Approved

Approval letter received

Ms. Tamera Eplin

NCDEHNR

1/21/2009 9:17 AM

NCDOT Review- No Conditions

Approved

Driveway permit received

Leah Wagner

NCDOT

1/28/2009 1:16 PM

Stormwater Review- Conditions

Approved with Conditions

Cory Larsen

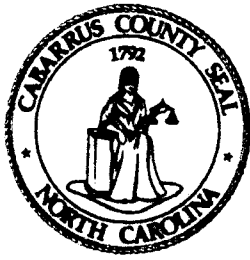
NCDENR Division DWQ

3-13-09 :00 PM

Low-density projects shall comply with each of the following standards:

1. Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.
2. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using division-approved methodology.
3. Deed restrictions and protective covenants are required by the permittee to ensure that subsequent development activities maintain the development (or redevelopment) consistent with the approved plans. The permittee shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

Cabarrus County Department of Commerce
Zoning Division
65 Church Street SE, Concord, NC 28025
Phone: 704-920-2138 Fax: 704-920-2144 . www.cabarruscounty.us



Robbie Foxx, CZO
Senior Zoning Inspector

March 11th, 2009

To: Cabarrus County Board of Adjustment

From: Robbie Foxx, CZO
Senior Zoning Inspector

Re: WSACC Pump Station-Reedy Creek Project

Dear Board Member:

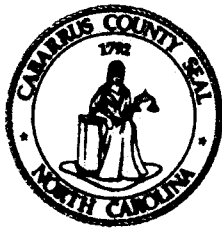
Water and Sewer Authority of Cabarrus County is required to comply with development standards of multiple local and state review agencies. Subsequent to review, the applicant is required to obtain a Post-Construction Permit required by the North Carolina Division of Water Quality. To allow adequate time to obtain this permit, the applicant is requesting the case be tabled until the April 2009 Board of Adjustment meeting.

Sincerely,

Robbie Foxx, CZO
Senior Zoning Inspector
704-920-2138
rdfoxx@cabarruscounty.us

Cabarrus County Department of Commerce
Zoning Division
65 Church Street SE, Concord, NC 28025
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CUSE2008-00010

March 19th, 2009

Findings of Fact

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WSACC
232 Davidson Hwy
Concord, NC 28025

Property Owner- Cabarrus County Water & Sewer Authority
WSACC
232 Davidson Hwy
Concord, NC 28025

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Robbie Foxx
Cabarrus County Zoning Division
3/06/2009 12:36 PM

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12/28/2008 8:57 PM

Health Alliance Review- No Conditions

Approved

David Troutman
Cabarrus County Health Alliance
2/12/2009 12:36 PM

Soil-Water Conservation Review- No Conditions

Approved

Dennis Testerman
Cabarrus County Soil and Water Conservation
1/21/2009 9:28 AM

Erosion Control Review- No Conditions

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Approval letter received
Ms. Tamera Eplin
NCDEHNR
1/21/2009 9:17 AM

NCDOT Review- No Conditions

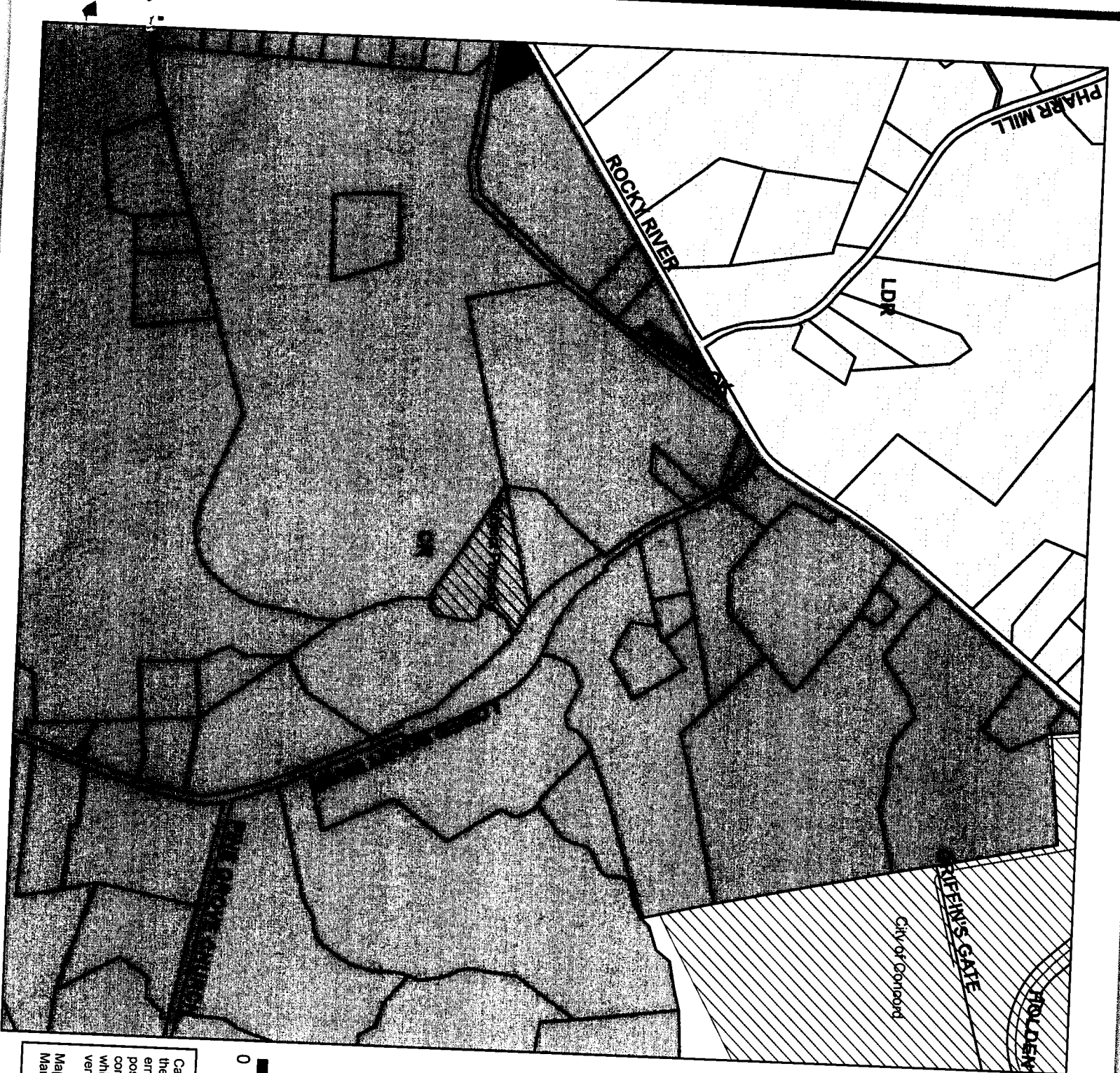
Approved

Driveway permit received
Leah Wagner
NCDOT
1/28/2009 1:16 PM

Stormwater Review- No Conditions

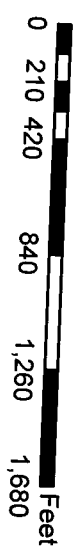
Approved

Ms. Chrys Baggett
NCDENR Division DWQ
12/18/2008 10:42 AM



CUSE2008-00010
 Cabarrus County
 Water & Sewer Authority
 Lower Rocky River Pump Station
 8112 Lower Rocky River Road
 PIN 5526-39-7227

Legend	
	Parcel Boundary
	County Zoning
	AO
	CR
	LDR
	OI
	Street Centerline



Cabarrus County shall not be held liable for any errors in these data. This includes errors of omission, commission, positional accuracy of the data, and relative and construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.

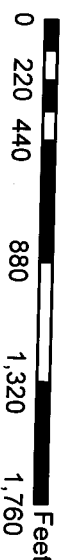
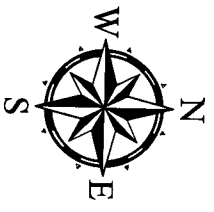
Map Prepared by Cabarrus County Zoning Division.
 March 10, 2009



CUSE2008-00010
 Cabarrus County
 Water & Sewer Authority
 Lower Rocky River Pump Station
 8112 Lower Rocky River Road
 PIN 5526-39-7227

Legend

- Parcel Boundary
- Street Centerline
- City of Concord



Cabarrus County shall not be held liable for any errors in these data. This includes errors of omission, commission, positional accuracy of the data, and relative and positional accuracy of the data. These data cannot be construed to be a legal document. Primary sources from which these data were compiled must be consulted for verification of information contained within the data.
 Map Prepared by Cabarrus County Zoning Division. March 10, 2009

RECEIPT

CABARRUS COUNTY
65 SE CHURCH STREET
CONCORD, NC 28025

Application: CUSE2008-00010
Application Type: COND USE PERMIT/NA/NA
Address: 8122 Lower Rocky River RD
Concord NC

Receipt No.: 408025

Payment Method:	Ref Number:	Amount Paid:	Payment Date:	Cashier ID:
Check	24035	556.20	1/21/2009	MPFRICKER

Applicant Info.: Bach
PO Box 428
Concord NC

Work Description: Proposed Pump Station

Receipt

WSACC

WATER & SEWER AUTHORITY
OF CABARRUS COUNTY

February 25, 2009

Office: 232 Davidson Hwy.
Concord, NC 28027

Mail to: P.O. Box 428
Concord, NC 28026-0428

Phone: 704.786.1783
Fax: 704.795.1564

Susie A. Morris, AICP
Commerce Department Zoning Administrator
Cabarrus County
Post Office Box 707
Concord, North Carolina 28026-0707

**RE: WSACC Reedy Creek Pump Station Project -- Adjacent Cell Tower Requirements
for Conditional Use Permit**

Dear Susie,

Per your request and the requirements under the Cabarrus County Conditional Use Permit (CCCUP), this is to memorialize the responsibilities that the Water and Sewer Authority of Cabarrus County (WSACC) has accepted regarding the Reedy Creek Pump Station project in order to procure a permit.

First, WSACC will not construct any structure on the Reedy Creek Pump Station site as part of this project nor in the future within the required 250-foot fall zone buffer for the existing cell tower (the Tower) currently owned and operated by American Tower on the adjoining property owned by Jerry Wayne Linker having PIN No. 55263903280000 and Real ID. No. 01-021-0004.00. The 250-foot fall zone buffer, along with other pertinent information, will be shown on the recombination survey plat as required by the CCCUP.

Second, if the Tower collapses onto the Reedy Creek Pump Station site in the future, WSACC will immediately make a site assessment and then contact the Tower owner regarding its responsibility for paying any damages done to WSACC-owned structures, equipment, and other items on the site as a result of the Tower collapse. WSACC's Attorney, Todd Phillips, has worked with WSACC staff on the review and coordination of this project, and he (or an assigned designee) will also represent us in any future evaluation and/or claims made due to a Tower collapse.

Please let us know if you have any questions and/or concerns regarding this subject, and we truly appreciate you and your staff's time and effort in regards to the CCCUP review.

Sincerely,



Thomas A. Bach, PE
Utility Systems Engineer

cc: Kassie Watts, AICP, Cabarrus County
Robbie Foxx, CZO, Cabarrus County
Todd Phillips, Esq., Hartsell & Williams, PA
Van Rowell, P.E., WSACC
Mark Lomax, WSACC
Project File

HARTSELL & WILLIAMS, PA

ATTORNEYS AT LAW

THOMAS M. GRADY
FLETCHER L. HARTSELL, JR.
SAMUEL F. DAVIS, JR.
K. TODD PHILLIPS
J. MERRITT WHITE, III
H. JAY WHITE, SR.
DAVID C. WILLIAMS
MICHAEL R. BURGNER
CHRISTY E. WILHELM
ANDREW T. CORNELIUS
LAURA MUELLER BAKER
JOSH J. COSTNER
MARIANA C. GODWIN

71 MCCACHERN BOULEVARD, S.E.
POST OFFICE BOX 368 (28026)
CONCORD, NORTH CAROLINA 28025
TELEPHONE (704) 786-5161
TELECOPIER (704) 788-8058

JOHN R. BOGER, JR.
(OF COUNSEL)

ESTABLISHED 1896

LUTHER T. HARTSELL (1870-1961)
LUTHER T. HARTSELL JR. (1902-1961)
JOHN HUGH WILLIAMS (1913-1995)

March 10, 2009

Writer's email: tphillips@hwpalaw.com

Jaime L. Picariello, Esq.
Supervising Attorney, Land Management
American Tower Corporation
10 Presidential Way
Woburn, Massachusetts 01801

RE: Lease by and between Jerry Wayne Linker and SpectraSite Communications, Inc. with respect to certain real property located at FLOWERS NC 2 – 8100 Lower Rocky River Road, Harrisburg, North Carolina
American Tower Site Name: Flowers NC 2
American Tower Site No. 306408

Dear Jaime:

As you recall, our client, Water and Sewer Authority of Cabarrus Country (“WSACC”), purchased a portion of the real property of Jerry Wayne Linker, unmarried, in 2008 (the “WSACC Parcel”). As you know, the WSACC parcel was part of a larger parcel owned by Mr. Linker (the “Linker Property”). In October 2000 Mr. Linker and SpectraSite Communications, Inc., an affiliate of American Tower Assets Sub, LLC (“American Tower”), entered into that Certain Option and Ground Lease Agreement (the “Ground Lease”), pursuant to which SCI leased from Mr. Linker a different portion of the Linker Property (the “Leased Tract”). In Paragraph 27 thereof, the Ground Lease provides:

During the Initial Term and any Renewal Terms of this Lease, Lessor shall, prior to selling the Property or any real property of which the Property is a part, notify Lessee in writing of the sale price and terms offered by a third party, together with a copy of the third party's offer. Lessee shall have the right of first refusal to purchase the real property being sold by Lessor on the same terms and conditions. Lessee shall give Lessor notice of its intention to purchase the same within thirty (30) days of receipt of the Lessor's notice. If Lessee gives no such notice of its intention to purchase the real property, Lessor may sell the real property to the third party on the stated terms of price, as long as such sale is made subject to the terms of this Lease. Notwithstanding the foregoing, Lessee shall not have a right of first refusal to purchase the Property and the Easement in those instances in which Lessor is an individual and Lessor proposes to convey the real property to another member of

Jaime L. Picariello, Esq
March 10, 2009
Page 2

Lessor's family; however, the Property and the Easement shall be conveyed subject to this Lease.

On or about October 25, 2000, Linker and SCI executed a Memorandum of Agreement regarding the Ground Lease, which Memorandum SCI recorded in the Cabarrus County Registry in Book 3558 at Page 305.

By Assignment of Lease dated July 26, 2001 and recorded in Book 3558 at Page 311, Cabarrus County Registry, SCI assigned to SpectraSite Wireless Towers, Inc. ("SWTF") all of SCI's right, title, and interest in the Ground Lease and the Property. Effective February 23, 2007, SWTI merged with and into SCI with SCI as the surviving entity.

By North Carolina Assignment and Assumption of Lease or Other Agreement dated and effective February 28, 2007, SCI transferred and assigned to American Tower all of its right, title, and interest in the Ground Lease and the Linker Property.

On or about October 29, 2008, American Tower executed and delivered to WSACC its Waiver of Right of First Refusal with respect to the WSACC Parcel (the "Waiver"). WSACC recorded the Waiver in Book 8477, Page 101, Cabarrus County Registry, a copy of which is enclosed for your records.

Enclosed is a plat of the affected properties. As you can see, the WSACC Parcel is not the Leased Tract. However, the road by which American Tower accesses the Leased Tract (the "Access Road") is part of the WSACC Parcel.

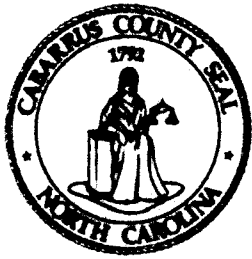
The staff of the Cabarrus County Planning and Zoning Board has requested that WSACC remind you in writing that the Access Road is located on the WSACC Parcel. The staff has also requested that WSACC remind you that American Tower will need to deal with WSACC on any issues relating to that portion of the Access Road that is on WSACC's Parcel.

Thank you for your attention to this matter. Please do not hesitate to contact us if you have any questions or concerns regarding this or any other matter.

Very truly yours,

K. Todd Phillips

KTP/ecs
enclosure



Robbie Foxx, CZO
Senior Zoning Inspector

March 3, 2008

Dear Adjacent Property Owner:

Notice of Conditional Use Hearing for Cabarrus County

This letter is to inform you that Cabarrus County Water and Sewer Authority (WSACC), Concord NC, has petitioned the Cabarrus County Board of Adjustment for a Conditional Use Permit. The applicant is requesting a Conditional Use Permit that would allow construction of a new pump station on property owned by WSACC, located at 8112 Lower Rocky River Road, Concord, N.C. 28027 (PIN# 5526397227).

A public hearing will take place on March 19th at 7:00 p.m. at the Cabarrus County Governmental Center located at 65 Church Street SE, Concord, North Carolina. The Conditional Use application is on file in the Cabarrus County Zoning Department. If you have any questions or would like to view the application, please contact our office at 920-2137.

Sincerely,

Robbie Foxx, CZO
Senior Zoning Inspector

Cabarrus County Department of Commerce
Zoning Division
65 Church Street SE, Concord, NC 28025
Phone: 704-920-2138 Fax: 704-920-2144 . www.cabarruscounty.us



55263972270000
55263899580000
WATER AND SEWER AUTHORITY OF CABARRUS COUNTY –
P O BOX 428
CONCORD, NC 280260428

55262861570000
55262861570000
SNYDER DOROTHY G HODGE JO ANN –
C/O DOROTHY G SNYDER
9240 RAVENWING DRIVE
CHARLOTTE, NC 282620000

55263904480000
LINKER JERRY WAYNE –
1419 PEMBROOK DRIVE
CONCORD, NC 280250000

55264967360000
DAVIDSON EDDYNE MCKENZIE –
8121 LOWER ROCKY RIVER RD
CONCORD, NC 280257836



CABARRUS COUNTY
 PO BOX 707
 CONCORD, NC 28025
 704-920-2137
 www.co.cabarrus.nc.us

Application Number
CASE-2008-00010
 Date
1/15/09

CONDITIONAL USE APPLICATION FORM
 Circle Jurisdiction That Applies:

Cabarrus County Town of Midland Town of Mt. Pleasant Town of Harrisburg

The Conditional Use Process:

A conditional use is necessary when a proposed land use may have some consequences that may warrant review by the Board of Adjustment. This review is to insure there will be no detrimental effects to surrounding properties nor will it be contrary to the public interest.

In order to apply for a conditional use a completed application along with the application fee is required to be turned in to the Zoning Office, 30 days prior to the scheduled public hearing. In order for the Board of Adjustment to grant approval of the conditional use, the applicant must provide the requested information in the following application.

If the Board finds that all approval criteria have been met, they may impose reasonable conditions upon the granting of any conditional use to insure public health, safety, and general welfare. If the application is approved the applicant then may proceed with securing all required local and state permits necessary for the endeavor. Failure to follow conditions set in the approval process would result in a violation of the Zoning Ordinance.

If there are additional questions concerning this process, please call the Zoning Office at (704) 920-2137.

TO THE BOARD OF ADJUSTMENT:

I, HEREBY PETITION THE BOARD OF ADJUSTMENT TO GRANT THE ZONING ADMINISTRATOR THE AUTHORITY TO ISSUE A CONDITIONAL USE PERMIT FOR THE USE OF THE PROPERTY AS DESCRIBED BELOW.

Applicant's Name
WATER & SEWER AUTHORITY OF CABARRUS
COUNTY (WSACC)
 Applicant's Address
P.O. BOX 428
CONCORD, NC 28026-0428
 Applicants Telephone Number

Property Owner's Name
WATER & SEWER AUTHORITY OF CABARRUS
COUNTY (WSACC)
 Property Owner's Address
P.O. BOX 428
CONCORD, NC 28026-0428
(704) 786-1783

Parcel Information

Existing Use of Property
 Proposed Use of Property
 Existing Zoning

AGRICULTURAL
WASTEWATER PUMPING STATION (PUBLIC)
CR

Property Location

8122 LOWER ROCKY RIVER ROAD

Property Acreage

7.84 ACRES

Tax Map and Parcel Number (PIN)

NOTE: WAITING ON RE-COMBINATION PLAT

Land Use of Adjacent Properties

(Provide Plat Map if Available) TO BE PROVIDED

NORTH _____

SOUTH _____

EAST _____

WEST _____

General Requirements

1. The Zoning Ordinance imposes the following general requirements on the use requested by the applicant. Under each requirement, the applicant should explain, with reference to the attached plans, where applicable, how the proposed use satisfies these requirements.

The Board must find that the uses(s) as proposed "are not detrimental to the public health, safety or general welfare."

THE PROPOSED WASTEWATER PUMPING STATION WAS DESIGNED BY A PROFESSIONAL ENGINEER IN THE STATE OF NORTH CAROLINA AND IS IN THE PROCESS OF BEING APPROVED (AUTHORIZATION TO CONSTRUCT) BY THE NCDENR.

The Board must find that the use(s) as proposed "are appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, etc."

THE SITE WHERE THE PROPOSED WASTEWATER PUMPING STATION IS LOCATED ALONG LOWER ROCKY RIVER ROAD (W/ DIRECT ACCESS) AND WILL INCLUDE THE FOLLOWING PROPOSED ITEMS: (1) WATER SERVICE CONNECTED TO THE EXISTING 16-INCH WATER MAIN; (OVER

The Board must find that the use(s) as proposed "will not violate neighborhood character nor adversely affect surrounding land uses."

THE PROPOSED WASTEWATER PUMPING STATION PLANS SHOW A LANDSCAPING SITE PLAN MAXIMIZING TREE RETAINAGE AND RE-FORESTATION. THE PUMPING STATION WILL ALSO INCLUDE AN ACTIVE ODOR CONTROL SYSTEM THAT WILL BE CONTINUOUSLY MONITORED BY US ALL STAFF

The Board must find that the use(s) as proposed "will comply with the general plans for the physical development of the County or Town, as embodied in the Zoning Ordinance or in the area development plans that have been adopted."

THE PROPOSED WASTEWATER PUMPING STATION DESIGN WILL INCLUDE SERVICE FOR FUTURE (PROPOSED) WASTEWATER NEEDS IN THE ENTIRE REEVA/MCKEE CREEK DRAINAGE BASINS, INCLUDING MELB LENOIR COUNTY. BUILDINGS AT THE SITE WERE DESIGNED BY AN ARCHITECT AND WILL MEET/COMPLY WITH LOCAL BUILDING CODES. IN ADDITION, THIS FACILITY WILL NOT GENERATE NOISE AT A DISCERNIBLE LEVEL.

2. The Zoning Ordinance also imposes SPECIFIC REQUIREMENTS on the use(s) requested by the applicant. The applicant should be prepared to demonstrate that, if the land is used in a manner consistent with the plans, specifications, and other information presented to the Board, the proposed use(s) will comply with specific requirements concerning the following:

Nature of use (type, number of units, and/or area):
WASTEWATER PUMPING STATION, TOTAL OF 4 PUMPING CHAMBERS (2 PUMPS)
PROPOSED AT INITIAL STREET UP OF STATION), AND OTHER ANCILLARY

Accessory use (if any):
NONE

Setback provisions: STATED IN A NOTE ON PLAT MAP

Principle Use
Front: 75'

Side: 10'

Rear: 30'

Accessory Use
Front: _____

Side: _____

Height provisions:

Accessory Use _____

Principle Use _____

Off street parking and loading provisions: (include calculations)
PROVIDED ON PLAN

Sign provisions: (include sketch drawing with dimensions)
PROVIDED ON PLAN

Provisions for screening landscaping and buffering: (if required add to site plan)
PROVIDED ON PLAN

Provisions for vehicular circulation and access to streets: (provide NCDOT permit if necessary)
PROVIDED ON PLAN AND APPROVED NCDOT DRIVEWAY PERMIT

Adequate and safe design for grades, paved curbs and sidewalks, drainage systems, and turf to handle storm waters, prevent erosion, subdrains, etc.
PROVIDED ON PLAN

An adequate amount and safe location of play areas for children and other recreational uses according to the concentration of residential property:
NOT APPLICABLE

Compliance with overlay zones including but not limited to the Thoroughfare Overlay and the River/Stream Overlay Zones:
WILL COMPLY WITH CABAREAU COUNTY'S CHAPTER 1 OVERLAY ZONE

Compliance with the Flood Damage Prevention Ordinance:
PROVIDED IN PLAN

Other requirements may be requested by the applicant or specified by the Board for public health, safety, welfare, and convenience:
PROVIDED IN PLAN

Predefined Standards

Each individual Conditional Use listed in the Zoning Ordinance may have specific standards imposed. Refer to the Conditional Use section of the Zoning Ordinance for these requirements. Each standard should be addressed in the site plan submitted along with this application.

Required Attachments/Submittals

1. Printout of names and addresses of all immediately adjacent property owner, including any directly across the street.
2. Scaled site plan containing all requested information above on legal or ledger sized paper. Larger sized copies will be accepted if copies for each Board Member is provided for distribution.

Certification

I hereby confirm that the information contained herein and herewith is true and that this application will not be scheduled for official consideration until all of the required contents are to the Zoning

[Signature]
-US ACC

Date 1/15/09
Date 1/15/09

STAFF USE ONLY:

Jurisdiction

(circle jurisdiction that applies)

Cabarrus County

Town of Midland

Town of Mt. Pleasant

Town of Harrisburg

Application Fee Collected

Yes _____

No _____

Posted Database

Yes _____

No _____

Site Plan Attached

Yes _____

No _____

Public Hearing Date

Notice of Public Hearing Published On

Notices to Applicant(s) and Adjoining Property Owners Mailed On

Signs Posted On

Process Record

Record of Decision:

Motion to:

Approve _____

Deny _____

Board of Adjustment Recommendation:

Approve _____

Deny _____

Action Taken by Board of Adjustment:

Date Notification of Action Mailed to Applicant(s):

Signature of Zoning Official

PUBLIC HEARING NOTICE

Cabarrus County Board of Adjustment Meeting

March 19, 2009 at 7:00 p.m.

Cabarrus County Government Center

Concord, North Carolina

Conditional Use Permit

Case #- CUSE2008-00010

Cabarrus County Water and Sewer Authority has petitioned the Cabarrus County Board of Adjustment for a Conditional Use Permit to allow construction of a pump station. The subject property, owned by Cabarrus County WSACC, is located at 8122 Lower Rocky River Road, Concord, N.C. 28027 (PIN# 5526397227).

CUSE2008-00010 Adjacent Owners List

55263972270000

55263899580000

WATER AND SEWER AUTHORITY OF CABARRUS COUNTY –
P O BOX 428
CONCORD, NC 280260428

55262861570000

55262861570000

SNYDER DOROTHY G HODGE JO ANN –
C/O DOROTHY G SNYDER
9240 RAVENWING DRIVE
CHARLOTTE, NC 282620000

55263904480000

LINKER JERRY WAYNE –
1419 PEMBROOK DRIVE
CONCORD, NC 280250000

55264967360000

DAVIDSON EDDYNE MCKENZIE –
8121 LOWER ROCKY RIVER RD
CONCORD, NC 280257836

Division of Water Quality

Water Quality Planning Branch
1617 Mail Service Center
Raleigh, NC 27699-1617
FAX: (919) 715-5637

DATE: 11/17/2006

TO: Lisa FAX NUMBER: 704-525-3953

FROM: Hannah

PHONE NUMBER: (919) 733-5083 extension: 555

NO. OF PAGES (including this sheet): 4

COMMENTS:

Don't worry - this is a VALID FAISI.
The process is now complete. The approval letter should be arriving soon.

HS ☺



North Carolina
Department of Administration

Michael F. Easley, Governor

Britt Cobb, Secretary

November 15, 2006

Ms. Hannah Stallings
NCDENR, Water Quality Division
1617 Mail Service Center
Raleigh, NC 27699-1617

Dear Ms. Stallings:

Re: SCH File # 07-E-4300-0109; EA/FONSI; Charlotte-Mecklenburg Utilities - Reedy/McKee Creek
Sewer Project to Collect & Convey Reedy Creek Basin Wastewater to a Single Regional Facility
& Eliminate Small Private Facilities & Minimize Overflows

The above referenced environmental impact information has been reviewed through the State Clearinghouse under the provisions of the North Carolina Environmental Policy Act.

Attached to this letter are comments made by agencies in the course of this review. Because of the nature of the comments, it has been determined that no further State Clearinghouse review action on your part is needed for compliance with the North Carolina Environmental Policy Act. The attached comments should be taken into consideration in project development.

Best regards.

Sincerely,

Chris Baggett / 216

Ms. Chrys Baggett
Environmental Policy Act Coordinator

Attachments

cc: Region F

Mailing Address:
1301 Mail Service Center
Raleigh, NC 27699-1301

Telephone: (919)807-2425
Fax (919)733-9571
State Courier #51-01-00
e-mail Chrys.Baggett@ncmail.net

Location Address:
116 West Jones Street
Raleigh, North Carolina



Michael F. Easley, Governor
William G. Rosa Jr., Secretary
North Carolina Department of Environment and Natural Resources
Alan W. Klimek, P. E. Director
Division of Water Quality

September 27, 2006

To: Chrys Baggett, State Clearinghouse
From: Hannah Stallings, NCDENR/Division of Water Quality *HKS*
Subject: EA/FONSI: CMUD - Reedy/McKee Creeks Interceptor Project
DENR#1264, DWQ#13377

The Division of Water Quality is submitting for State Clearinghouse review the enclosed six copies of the Environmental Assessment and Finding of No Significant Impact for the subject project.

The Department of Environment and Natural Resources has reviewed the EA. Please publish this project in the Environmental Bulletin and circulate the environmental documents as appropriate.

Contact me at 919.733.5083 ext. 555 if you have any questions.

Thank You





North Carolina Department of Environment and Natural Resources
Division of Land Resources

James D. Simons, PG, PE
Director and State Geologist

Land Quality Section

Michael F. Easley, Governor
William G. Ross Jr., Secretary

September 5, 2008

LETTER OF APPROVAL

Mr. Dennis D. Gwaltney, Senior Project Manager
~~6100~~ 5100 Brookshire Boulevard
Charlotte, North Carolina 28216

RE: Project Name: Reedy Creek Pump Station (CMUD)
Acres Approved: 2.92
Project ID: CABAR-2009-004
County: Cabarrus, Lower Rocky River Road
River Basin: Yadkin
Submitted By: Dennis D. Gwaltney, Senior Project Manager
Date Received by LQS: August 12, 2008
Plan Type: New

Dear Mr. Gwaltney:

This office has reviewed the subject erosion and sedimentation control plan. We find the plan to be acceptable and hereby issue this Letter of Approval. The Certificate of Approval must be posted at the job site. This plan approval shall expire three (3) years following the date of approval, if no land-disturbing activity has been undertaken, as is required by Title 15A NCAC 4B .0129.

Title 15A NCAC 4B .0118(a) requires that a copy of the approved erosion control plan be on file at the job site. Also, this letter gives the notice required by G.S. 113A-61.1(a) of our right of periodic inspection to insure compliance with the approved plan.

North Carolina's Sedimentation Pollution Control Act is performance-oriented, requiring protection of existing natural resources and adjoining properties. If, following the commencement of this project, the erosion and sedimentation control plan is inadequate to meet the requirements of the Sedimentation Pollution Control Act of 1973 (North Carolina General Statute 113A-51 through 66), this office may require revisions to the plan and implementation of the revisions to insure compliance with the Act.

Mooresville Regional Office
610 East Center Avenue, Suite 301, Mooresville, North Carolina 28115 • Phone: 704-663-1699 / FAX: 704-663-6040

FOR LEAD STATE AGENCY USE ONLY

Conclusion Statement *(Must be completed and signed by responsible state agency and submitted with the EA document to the State Clearinghouse.)*

Select the appropriate statement below:

After preparation/review of this EA, the responsible state agency has concluded there is a *Finding of No Significant Impact (FONSI)* and will not be preparing an *Environmental Impact Statement (EIS)*. (Attach any additional information regarding this conclusion that you deem important to this finding.)

The agency has completed this EA and is hereby submitting it for review and comment. After a consideration of the comments received, the agency will proceed with a *FONSI* or prepare an *EIS*.

Hannah Phillips

Signed

DWS-DELR

Agency

Letter of Approval
Dennis D. Gwaltney, Senior Project Manager
September 5, 2008
Page 2 of 2

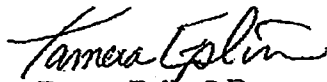
Acceptance and approval of this plan is conditioned upon your compliance with Federal and State water quality laws, regulations, and rules. In addition, local city or county ordinances or rules may also apply to this land-disturbing activity. This approval does not supersede any other permit or approval.

Please be aware that your project will be covered by the enclosed NPDES General Stormwater Permit NCGO1000 (Construction Activities). You should first become familiar with all of the requirements for compliance with the enclosed general permit.

Please note that this approval is based in part on the accuracy of the information provided in the Financial Responsibility Form, which you provided. You are requested to file an amended form if there is any change in the information included on the form. In addition, it would be helpful if you notify this office of the proposed starting date for this project. Please notify us if you plan to have a preconstruction conference.

Your cooperation is appreciated.

Sincerely,



Tamera Eplin, P.E.
Assistant Regional Engineer
Land Quality Section

TE/ae

Enclosures: Certificate of Approval
NPDES Permit

cc: Woolpert
Inspection Department
Surface Water Protection

CERTIFICATE OF PLAN APPROVAL



The posting of this certificate certifies that an erosion and sedimentation control plan has been approved for this project by the North Carolina Department of Environment and Natural Resources in accordance with North Carolina General Statute 113A - 57 (4) and 113A - 54 (d) (4) and North Carolina Administrative Code, Title 15A, Chapter 4B.0107 (c). This certificate must be posted at the primary entrance of the job site before construction begins and until establishment of permanent groundcover as required by North Carolina Administrative Code, Title 15A, Chapter 4B.0127 (b).

REEDY CREEK PUMP STATION, LOWER ROCKY RIVER ROAD, CABARRUS COUNTY

Project Name and Location

CABAR-2009-004

SEPTEMBER 5, 2008

Date of Plan Approval



TAMERA EPLIN

Assistant Regional Engineer



Michael F. Easley, Governor

William G. Ross Jr., Secretary
North Carolina Department of Environment and Natural ResourcesColeen H. Sullins, Director
Division of Water Quality

June 26, 2008

DWQ# 08-0715

Mecklenburg County

Cabarrus County

Mr. Dennis Gwaltney
Charlotte/Mecklenburg Utilities
5100 Brookshire Blvd.
Charlotte, NC 28216

Subject: Reedy Creek Interceptor, Charlotte

APPROVAL of 401 Water Quality Certification with Additional Conditions

Dear Mr. Gwaltney:

You have our approval, in accordance the general certification and those conditions listed below, to impact/fill 1.6 and 0.075 acre of wetland (temporary and permanent, respectively) and impact 2224 linear feet (lf) of stream (283 lf, permanent; (183 lf, Cabarrus County; 100 lf, Mecklenburg County)) in order to construct the sewer line in Mecklenburg and Cabarrus Counties, as described in your application received by the Division of Water Quality (DWQ) on April 21, 2008 and subsequent information received on June 25, 2008. After reviewing your application, we have determined that this project is covered by Water Quality General Certification Number 3699, which can be viewed on our web site at <http://h2o.enr.state.nc.us/ncwetlands>. The General Certification allows you to use Nationwide Permit Number 12 once it is issued to you by the U.S. Army Corps of Engineers. Please note that you should get any other federal, state or local permits before proceeding with your project, including those required by (but not limited to) Sediment and Erosion Control, Non-Discharge, and Water Supply Watershed regulations.

The above noted Certification will expire when the associated 404 permit expires unless otherwise specified in the General Certification. This approval is only valid for the purpose and design that you described in your application. If you change your project, you must notify us in writing, and you may be required to send us a new application for a new certification. 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.

In addition to the requirements of the certification, you must also comply with the following conditions:

1. The Mooresville Regional Office shall be **notified in writing** once construction at the approved impact areas has commenced.

One
North Carolina
Naturally

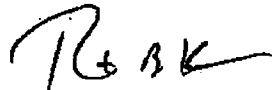
2. It appears that construction of the new sewer line may result in additional development within several parcels. The **cumulative impacts for this project must be adequately addressed**. To address this concern prior to allowing access to the system an on-site storm water management measures (such as level spreaders, bioretention or constructed wetlands) shall be required in accordance with DWQ rules and regulations for those parcels when they are developed. However, the Division is open to other approaches that would protect downstream water quality from cumulative impacts.
3. Culverts placed in streams/wetlands shall be installed "in the dry". Immediately upon completion of the installation, water flow shall be returned to its natural course. Existing stream dimensions (including the cross section dimensions, pattern, and longitudinal profile) must be maintained (or restored via constructed benches) above and below locations of each culvert. 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.
4. All wetlands, streams, surface waters, and riparian buffers located on the project site where impacts are not allowed shall be clearly marked (example- orange fabric fencing) prior to any land disturbing activities.
5. Use of native vegetation and other soft stream bank stabilization techniques must be used where practicable instead of riprap or other bank hardening methods. If riprap is necessary, it shall not be placed in the streambed, unless approved by the DWQ.
6. Storm water discharge structures at this site shall be constructed in a manner such that the potential receiving streams (of the discharge) will not be impacted due to sediment accumulations, scouring or erosion of the stream banks.
7. 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 Preconstruction Notification application. All construction activities associated with this project shall meet, and/or exceed, those requirements specified in the most recent version of the North Carolina Sediment and Erosion Control Manual and shall be conducted so that no violations of state water quality standards, statutes, or rules occur.
8. Sediment and erosion control measures shall not be placed in wetlands or waters to the maximum extent practicable. If placement of sediment and erosion control devices in wetlands and waters is unavoidable, they shall be removed and the natural grade restored within two months of the date the Division of Land Resources has released the project.
9. Upon completion of the project, the applicant shall complete and return the enclosed "Certificate of Completion" form to the 401/Wetlands Unit of the NC Division of Water Quality.
10. Continuing Compliance. The applicant (Charlotte/Mecklenburg Utilities) shall conduct all activities in a manner so as not to contravene any state water quality standard (including any requirements for compliance with section 303(d) of the Clean Water Act) and any other appropriate requirements of state and federal law. If DWQ 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, DWQ may reevaluate and modify this certification to include conditions appropriate to assure compliance with such standards and requirements in accordance with 15 A NCAC 2H.0507(d). Before codifying the certification, DWQ shall notify the applicant 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 the applicant 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.

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, 6714 Mail Service Center, Raleigh, N.C. 27699-6714. 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 Mr. Alan Johnson in the Mooresville Regional Office at 704-663-1699 or Ms. Cyndi Karoly in the Central Office in Raleigh 919-733-9721.

Sincerely,



for Coleen H. Sullins

Attachments

cc: Army Corps of Engineers, Asheville
Ian McMillan, Wetlands Unit
MRO, Land Quality
Central Files
File Copy
Suzanne Knudsen, S&ME

Notice Of Initiation of Construction

To be completed by DWQ

DWQ Project No. 08-0715 County: Mecklenburg
 Applicant: Charlotte/Meck
 Project Name: Reedy Creek Interceptor
 Date of Issuance of 401 Water Quality Certification: 6/26/08

Upon initiation of impacts approved by the issuance of this 401 Water Quality Certification/Buffer Authorization, the applicant is required to return this notice (condition #1 per approval) to:

DWQ-SWP Section, Mooresville Regional Office
310 East Center Avenue, Suite 301
Mooresville, NC 28115

Or

Fax to the attention of Alan Johnson at: 704-663-6040

Applicant/Authorized Agent's Certification

I, _____, hereby state that, to the best of my abilities, due care and diligence the approved impacts have begun to be constructed. The proposed impacts are to be installed/constructed/completed within substantial compliance and intent of the 401 Water Quality Certification/Buffer Rule Authorization, the approved plans and specifications, and other supporting materials.

Date of initiation of Construction: _____

Signature: _____

Date: _____

Title: _____

Certificate of Completion

DWQ Project No. _____ County: _____

Applicant: _____

Project Name: _____

Date of Issuance of 401 Water Quality Certification: _____

Upon completion of all work approved within the 401 Water Quality Certification and Buffer Rules, and any subsequent modifications, the applicant is required to return this certificate to the 401/Wetlands Unit, North Carolina Division of Water Quality, 1650 Mail Service Center, Raleigh, NC, 27699-1650. This form may be returned to DWQ by the applicant, the applicant's authorized agent, or the project engineer. It is not necessary to send certificates from all of these.

Applicant's Certification

I, _____, hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature: _____ Date: _____

Agent's Certification

I, _____, hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature: _____ Date: _____

If this project was designed by a Certified Professional

I, _____, as a duly registered Professional _____ (i.e., Engineer, Landscape Architect, Surveyor, etc.) in the State of North Carolina, having been authorized to observe (periodically, weekly, full time) the construction of the project, for the Permittee hereby state that, to the best of my abilities, due care and diligence was used in the observation of the construction such that the construction was observed to built within substantial compliance and intent of the 401 Water Quality Certification and Buffer Rules, the approved plans and specifications, and other supporting materials.

Signature: _____ Registration No.: _____ Date: _____

**U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT**

Action Id. 20080739

County: Mecklenburg/Cab. U.S.G.S. Quad: Mint Hill/Harrisburg/Conc

NOTIFICATION OF JURISDICTIONAL DETERMINATION

Property Owner/Agent: Charlotte-Mecklenburg Utilities Dept.
Address: 5100 Brookshire Blvd.
Charlotte, NC 28216

Telephone No.: _____

Property description:

Size (acres) N/A - Linear
Nearest Waterway Reedy Creek
USGS HUC _____

Nearest Town Charlotte
River Basin Yadkin
Coordinates N 35.241 W 80.716

Location description Reedy Creek Interceptor project located in Cabarrus and Mecklenburg Counties along Reedy Creek and crossing I-485 south of Harrisburg.

Indicate Which of the Following Apply:

A. Preliminary Determination

- Based on preliminary information, there may be wetlands on the above described property. We strongly suggest you have this property inspected to determine the extent of Department of the Army (DA) jurisdiction. To be considered final, a jurisdictional determination must be verified by the Corps. This preliminary determination is not an appealable action under the Regulatory Program Administrative Appeal Process (Reference 33 CFR Part 331).

B. Approved Determination

- There are Navigable Waters of the United States within the above described property 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 U.S. including wetlands on 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.
 - We strongly suggest you have the wetlands on your property delineated. Due to the size of your property and/or our present workload, the Corps may not be able to accomplish this wetland delineation in a timely manner. For a more timely delineation, you may wish to obtain a consultant. To be considered final, any delineation must be verified by the Corps.
 - The waters of the U.S. including wetland on your project area have been delineated and the delineation has been verified by the Corps. We strongly suggest you have this delineation surveyed. Upon completion, this survey should be reviewed and verified by the Corps. Once verified, this survey will provide an accurate depiction of all areas subject to CWA jurisdiction on your property which, provided there is no change in the law or our published regulations, may be relied upon for a period not to exceed five years.
 - The wetlands have been delineated and surveyed and are accurately depicted on the plat signed by the Corps Regulatory Official identified below on _____. 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 no waters of the U.S., to include wetlands, present on the above described property which are subject to the permit requirements of Section 404 of the Clean Water Act (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 property is located in one of the 20 Coastal Counties subject to regulation under the Coastal Area Management Act (CAMA). You should contact the Division of Coastal Management in Washington, NC, at (252) 946-6481 to determine their requirements.

Placement of dredged or fill material within waters of the US and/or wetlands without a Department of the Army permit may constitute a violation of Section 301 of the Clean Water Act (33 USC § 1311). If you have any questions regarding this determination and/or the Corps regulatory program, please contact Steve Chapin at (828) 271-7980 x224.

C. Basis For Determination

Cozier Branch>Reedy Creek>Rocky River>Yadkin River which is navigable-in-fact at Blewett Falls dam.

D. Remarks

E. Appeals Information (This information applies only to approved jurisdictional determinations as indicated in B. above)

This correspondence constitutes an approved jurisdictional determination for the above described site. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR part 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: Steve Chapin, Project Manager,
Asheville Regulatory Field Office
151 Patton Avenue, Room 208
Asheville, North Carolina 28801-5006

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 6/2/08.

****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: Steve Chapin

Date 04/02/2008

Expiration Date 04/02/2013

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.



North Carolina Department of Environment and Natural Resources
Division of Land Resources
Land Quality Section

James D. Simons, PG, PE
Director and State Geologist

Michael F. Easley, Governor
William G. Ross Jr., Secretary

September 5, 2008

LETTER OF APPROVAL WITH MODIFICATIONS

Mr. Dennis Gwaltney, Senior Project Manager
6100 Brookshire Boulevard
Charlotte, North Carolina 28216

RE: Project Name: Reedy Creek Sanitary Sewer Interceptor (CMUD)
Acres Approved: 83.2
Project ID: CABAR-2009-003
County: Cabarrus
River Basin: Yadkin
Submitted By: Dennis Gwaltney, Senior Project Manager
Date Received by LQS: August 8, 2008
Plan Type: New

Dear Mr. Gwaltney:

This office has reviewed the subject erosion and sedimentation control plan. We find the plan to be acceptable with modifications and hereby issue this letter of Approval With Modifications. The Modifications Required for Approval are listed on the attached page. This plan approval shall expire three (3) years following the date of approval, if no land-disturbing activity has been undertaken, as is required by Title 15A NCAC 4B .0129.

Please be advised that Title 15A NCAC 4B .0118(a) requires that a copy of the approved erosion control plan be on file at the job site. Also, you should consider this letter to give the Notice required by G.S. 113A-61.1(a) of our right of periodic inspection to insure compliance with the approved plan.

North Carolina's Sedimentation Pollution Control Program is performance-oriented, requiring protection of existing natural resources and adjoining properties. If, following the commencement of this project, it is determined that the erosion and sedimentation control plan is inadequate to meet the requirements of the Sedimentation Pollution Control Act of 1973 (North

Letter of Approval with Modifications
Dennis Gwaltney, Senior Project Manager
September 5, 2008
Page 2 of 3

Carolina General Statute 113A-51 through 66), this office may require revisions to the plan and implementation of the revisions to insure compliance with the Act.

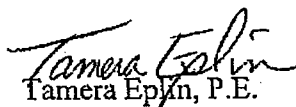
Acceptance and approval of this plan is conditioned upon your compliance with Federal and State water quality laws, regulations, and rules. In addition, local city or county ordinances or rules may also apply to this land-disturbing activity. This approval does not supersede any other permit or approval.

Please be aware that your project will be covered by the enclosed NPDES General Stormwater Permit NCGO1000 (Construction Activities). You should first become familiar with all of the requirements for compliance with the enclosed general permit.

Please note that this approval is based in part on the accuracy of the information provided in the Financial Responsibility Form, which you have provided. You are requested to file an amended form if there is any change in the information included on the form. In addition, it would be helpful if you notify this office of the proposed starting date for this project. Please notify us if you plan to have a preconstruction conference.

Your cooperation is appreciated.

Sincerely,


Tamera Eplin, P.E.
Assistant Regional Engineer
Land Quality Section

TE/ae

Enclosures: Certificate of Approval
Modifications Required for Approval
NPDES Permit

cc: Woolpert, Inc.
Inspection Department
Surface Water Protection

Letter of Approval with Modifications
Dennis Gwaltney, Senior Project Manager
September 5, 2008
Page 3 of 3

MODIFICATIONS REQUIRED FOR APPROVAL

Project Name: Reedy Creek Sanitary Sewer Interceptor (CMUD)
Project ID: CABAR-2009-003
County: Cabarrus

1. Stone outlets should be provided at low points along the silt fencing.
2. Silt fencing should be provided around any bore pits and associated work areas, including soil stockpiles.
3. The bid specifications Section 02270 should be modified to state soil and erosion control measures are to stay in place until area is stabilized and inspection is conducted by a representative of the Land Quality Section.
4. If it is found that additional area will be required for stockpiling of topsoil, contractor staging, or other land-disturbing activities associated with this project, a revised erosion control plan reflecting the additional area must be submitted to this office.
5. Additional measures may be necessary during the course of this project.

Woolpert, Inc.
Project # _____

SEP 08 2007

Approved _____
Received _____

FAX

CHARLOTTE MECKLENBURG UTILITIES
5100 BROOKSHIRE BLVD.

From: DENNIS GUALTNEY

Fax: 704-398-9180

Phone: 704-391-5080

To: PAUL WATSON

Fax: 704-525-8529

Ph: 803-325-5019

Date: 7-16-08

39
p sheets

COMMENTS: REEDY CREEK 404 PERMIT

PAUL ATTACHED PLEASE FIND A COPY OF THE
CORPS 404 PERMIT FOR REEDY CREEK.

PLEASE NOTE THE CORP IS REQUIRING SOME
PERFORM PERIODIC INSPECTIONS OF THE TRUSSES
TO ENSURE SPECIAL CONDITIONS ARE BEING MET.

PAUL INCLUDED IS THE FINAL NOTICE OF
ISSUANCE DOCUMENT.

**U.S. ARMY CORPS OF ENGINEERS
WILMINGTON DISTRICT**

Action ID. SAW-2008-01353-360 Counties: Mecklenburg/Cabarrus USGS Quads: Mint Hill/Harrisburg

GENERAL PERMIT (REGIONAL AND NATIONWIDE) VERIFICATION

Property Owner / Authorized Agent: Charlotte-Mecklenburg Utilities Dept., Att'n: Dennis Gwaltney
Address: 5100 Brookshire Blvd.
Charlotte, NC 28216

Telephone No.:

Size and location of property (water body, road name/number, town, etc.): Reedy Creek Interceptor located within a 95 acre corridor in both Mecklenburg and Cabarrus Counties.

Description of projects area and activity: This permit authorizes installation of approx. 75,000 LF of gravity sewer pipe and 4,000 LF of force main. In order to install the line, it will be necessary to cross streams (Reedy Creek, Crozier Branch, Rocky River, and unnamed tributaries) which will permanently impact 283 LF of stream channel. The project will also temporarily impact wetlands including one scrub-shrub, 10 emergent, and 12 forested wetlands totalling 1.607 acres (0.287 acre of forested wetlands). Permanent impacts will be necessary to one scrub-shrub and 11 forested wetlands totalling 0.075 acre.

SPECIAL CONDITIONS: (1) FORESTED WETLANDS (OUTSIDE OF THE 10-FOOT PERMANENTLY MAINTAINED SEWER CORRIDOR), TO BE TEMPORARILY IMPACTED BY THE PROJECT, SHALL BE RESTORED BY RE-PLANTING NATIVE WOODY VEGETATION UPON COMPLETION OF CONSTRUCTION AND PLANTED BACK TO A FORESTED SYSTEM (IN ACCORDANCE WITH RESTORATION PLAN SUBMITTED BY S&ME); (2) STREAMBEDS THAT ARE CROSSED MUST BE RETURNED TO ORIGINAL ELEVATIONS AND CONDITIONS; (3) S&ME PERSONNEL AND THE CORPS SHALL DO PERIODIC INSPECTIONS OF THE PROJECT TO BE SURE THE PROJECT IS MEETING THE INCORPORATED CONDITIONS; (4) AFTER PROJECT COMPLETION, THE CORPS OF ENGINEERS WILL BE INSPECTING THE PROJECT; AND (5) ALL WORK MUST BE DONE IN STRICT ACCORDANCE WITH SUBMITTED PLANS.

Applicable Law: Section 404 (Clean Water Act, 33 USC 1344)
 Section 10 (Rivers and Harbors Act, 33 USC 403)
Authorization: . Regional General Permit Number:
Nationwide Permit Number: 12

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) 733-1756) 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 Steve Chapin at 828-271-7980.

Corps Regulatory Official Steve Chapin

Date: July 11, 2008

Expiration Date of Verification: July 11, 2010

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:

- A. 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).
- B. 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.
- C. 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.
- D. The jurisdictional areas within the above described project area have been identified under a previous action. Please reference jurisdictional determination issued 4/2/08. Action ID. 20080739

Basis of Jurisdictional Determination: The site contains wetlands as determined by the USACE 1987 Wetland Delineation Manual and is adjacent to stream channels that exhibit indicators of ordinary high water marks. The stream channels on the property are Reedy Creek, Crozier Branch, Rocky River, and unnamed tributaries which flows into the Yadkin River and ultimately flows to the Atlantic Ocean through the Crozier Branch>Reedy Creek>Rocky River>Yadkin River system which is a Section 10 navigable-in-fact waterway at Blewett Falls dam.

Appeals Information: (This information does not apply to preliminary determinations as indicated by paragraph A. above).

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 Program
Attn: Steve Chapin, Project Manager
151 Patton Avenue, Room 208
Asheville, North Carolina 28801

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 Division 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 within 60 days from the *Issue Date* below.

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

Corps Regulatory Official: Steve Chapin

Issue Date: July 11, 2008

Expiration Date: *Five years from Issue Date*

**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:
S&ME (Lisa Beckstrom)

Permit Number: SAW-2008-01353-360
Permit Type: NW12
Name of County: Meckenburg/Cabarrus
Name of Permittee: Charlotte-Mecklenburg Utilities Dept., Att'n: Dennis Gwaltney
Date of Issuance: May
Project Manager: Steve Chapin

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:

U.S. Army Corps of Engineers
Attention: CESA-W-RG-A
151 Patton Avenue, Room 208
Asheville, North Carolina 28801-5006

Please note that your permitted activity is subject to a compliance inspection by an 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 conditions of the said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

Applicant: Charlotte-Mecklenburg Utilities Dept., Att'n: Dennis Gwaltney		File Number: SAW-2008- 01353-360	Date: May
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/ccwo/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 division 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 OF 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:

Steve Chapin, Project Manager
 USACE, Asheville Regulatory Field Office
 151 Patton Ave, Room 208
 Asheville, NC 28806
 828-271-7980

If you only have questions regarding the appeal process you may also contact:

Mr. Michael F. Bell,
 Administrative Appeal Review Officer
 CESAD-ET-CO-R
 U.S. Army Corps of Engineers, South Atlantic Division
 60 Forsyth Street, Room 9M15
 Atlanta, Georgia 30303-8801

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

District Engineer, Wilmington Regulatory Division, Attn: Steve Chapin, Project Manager, Asheville Regulatory Field Office, 151 Patton Avenue, Room 208, Asheville, NC 28801.

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

NATIONWIDE PERMIT 12
DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
FINAL NOTICE OF ISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS
FEDERAL REGISTER
AUTHORIZED MARCH 19, 2007

Utility Line Activities. Activities required for the construction, maintenance, repair, and removal of utility lines and associated facilities in waters of the United States, provided the activity does not result in the loss of greater than 1/2 acre of waters of the United States.

Utility lines: This NWP authorizes the construction, maintenance, or repair of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for the utility lines, in all waters of the United States, provided there is no change in pre-construction contours. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term "utility line" does not include activities that drain a water of the United States, such as drainage tile or french drains, but it does apply to pipes conveying drainage from another area.

Material resulting from trench excavation may be temporarily sidecast into waters of the United States for no more than three months, provided the material is not placed in such a manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2 acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access

roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

This NWP also authorizes temporary structures, fills, and work necessary to conduct the utility line activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding overhead lines, exceeds 500 feet; (4) the utility line is placed within a jurisdictional area (i.e., water of the United States), and it runs parallel to a stream bed that is within that jurisdictional area; (5) discharges that result in the loss of greater than 1/10-acre of waters of the United States; (6) permanent access roads are constructed above grade in waters of the United States for a distance of more than 500 feet; or (7) permanent access roads are constructed in waters of the United States with impervious materials. (See general condition 27.) (Sections 10 and 404)

Note 1: Where the proposed utility line is constructed or installed in navigable waters of the United States (i.e., section 10 waters), copies of the pre-construction notification and NWP verification will be sent by the Corps to the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), for charting the utility line to protect navigation.

Note 2: Access roads used for both construction and maintenance may be authorized, provided they meet the terms and conditions of this NWP. Access roads used solely for construction of the utility line must be removed upon completion of the work, accordance with the requirements for temporary fills.

Note 3: Pipes or pipelines used to transport gaseous, liquid, liquescent, or slurry substances over navigable waters of the United States are considered to be bridges, not utility lines, and may require a permit from the U.S. Coast Guard pursuant to Section 9 of the Rivers and Harbors Act of 1899. However, any discharges of dredged or fill material into waters of the United States associated with such pipelines will require a section 404 permit (see NWP 15).

NATIONWIDE PERMIT CONDITIONS

The following General Conditions must be followed in order for any authorization by a NWP to be valid:

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or

alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP's 4 and 48.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization and storm water management activities, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

15. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

16. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

17. Endangered Species. (a) No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees shall notify the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases

where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed activities will have "no effect" on listed species or critical habitat, or until Section 7 consultation has been completed.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific regional endangered species conditions to the NWP.

(e) Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

18. Historic Properties. (a) In cases where the district engineer determines that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the non-Federal applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

(d) The district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA Section 106 consultation is required. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA section 106 consultation is required and will occur, the district engineer will notify the non-Federal applicant that he or she cannot begin work until Section 106 consultation is completed.

(e) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

19. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the district engineer after notice and opportunity for public comment. The district engineer may also designate additional critical resource waters after notice and opportunity for comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, and 50 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWP's 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, and 38, notification is required in accordance with general condition 27, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWP's only after it is determined that the impacts to the critical resource waters will be no more than minimal.

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that

the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWP.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

(h) Where certain functions and services of waters of the United States are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

21. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA Section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

22. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

23. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

24. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

25. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:
"When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate

the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

27. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

- (1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or
- (2) Forty-five calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained.

Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

- (1) Name, address and telephone numbers of the prospective permittee;
- (2) Location of the proposed project;
- (3) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the district engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the project and when provided result in a quicker decision.);
- (4) The PCN must include a delineation of special aquatic sites and other waters of the United States on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters of the United States, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the United States. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;
- (5) If the proposed activity will result in the loss of greater than 1/10 acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.
- (6) If any listed species or designated critical habitat might be affected or is in the vicinity of the project, or if the project is located in designated critical habitat, for non-Federal applicants the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work. Federal applicants must provide documentation demonstrating compliance with the Endangered Species Act; and
- (7) For an activity that may affect a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, for non-Federal applicants the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property. Federal applicants must provide documentation demonstrating compliance with Section 106 of the National Historic Preservation Act.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (7) of this general condition. A letter containing the required information may also be used.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(3) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by Section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment

(after consideration of the compensatory mitigation proposal) are determined by the district engineer to be minimal, the district engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the district engineer determines that the adverse effects of the proposed work are more than minimal, then the district engineer will notify the applicant either: (1) That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan.

28. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

FURTHER INFORMATION

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project.

DEFINITIONS

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Discharge: The term "discharge" means any discharge of dredged or fill material.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a

decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete project in the Corps regulatory program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the United States.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or

flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of "open waters" include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through

which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a "single and complete project" is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line, which is defined at 33 CFR 328.3(d).

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP's, a waterbody is a jurisdictional water of the United States that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

REGIONAL CONDITIONS FOR NATIONWIDE PERMITS IN THE WILMINGTON DISTRICT

1.0 Excluded Waters

The Corps has identified waters that will be excluded from the use of all NWP's during certain timeframes. These waters are:

1.1. Anadromous Fish Spawning Areas

Waters of the United States identified by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning areas are excluded during the period between February 15 and June 30, without prior written approval from NCDMF or NCWRC and the Corps.

1.2. Trout Waters Moratorium

Waters of the United States in the twenty-five designated trout counties of North Carolina are excluded during the period between October 15 and April 15 without prior written approval from the NCWRC. (see Section I. b. 7. for a list of the twenty-five trout counties).

1.3. Sturgeon Spawning Areas

Waters of the United States designated as sturgeon spawning areas are excluded during the period between February 1 and June 30, without prior written approval from the National Marine Fisheries Service (NMFS).

2.0 Waters Requiring Additional Notification

The Corps has identified waters that will be subject to additional notification requirements for activities authorized by all NWP's. These waters are:

2.1. Western NC Counties that Drain to Designated Critical Habitat

Waters of the U.S. that requires a Pre-Construction Notification pursuant to General Condition 27 (PCN) and located in the sixteen counties listed below, applicants must provide a copy of the PCN to the US Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28805. This PCN must be sent concurrently to the US Fish and Wildlife Service and the Corps Asheville Regulatory Field Office. Please see General Condition 17 for specific notification requirements related to Federally Endangered Species and the following website for information on the location of designated critical habitat.

Counties with tributaries that drain to designated critical habitat that require notification to the Asheville US Fish and Wildlife Service: Avery, Cherokee, Forsyth, Graham, Haywood,

Henderson, Jackson, Macon Mecklenburg, Mitchell, Stokes, Surry, Swain, Transylvania, Union and Yancey.

Website and office addresses for Endangered Species Act Information:

The Wilmington District has developed the following website for applicants which provide guidelines on how to review linked websites and maps in order to fulfill NWP general condition 17 requirements.

<http://www.saw.usace.army.mil/wetlands/ESA>

Applicants who do not have internet access may contact the appropriate US Fish and Wildlife Service offices or the US Army Corps of Engineers office listed below.

US Fish and Wildlife Service
Asheville Field Office
160 Zillicoa Street
Asheville, NC 28801
Telephone: (828) 258-3939

Asheville US Fish and Wildlife Service Office counties: All counties west of and including Anson, Stanly, Davidson, Forsyth and Stokes Counties

US Fish and Wildlife Service
Raleigh Field Office
Post Office Box 33726
Raleigh, NC 27636-3726
Telephone: (919) 856-4520

Raleigh US Fish and Wildlife Service Office counties: all counties east of and including Richmond, Montgomery, Randolph, Guilford, and Rockingham Counties.

2.2. Special Designation Waters

Prior to the use of any NWP in any of the following North Carolina identified waters and contiguous wetlands, applicants must comply with Nationwide Permit General Condition 27 (PCN). The North Carolina waters and contiguous wetlands that require additional notification requirements are:

"Outstanding Resource Waters" (ORW) and "High Quality Waters" (HQW) (as designated by the North Carolina Environmental Management Commission), or "Inland Primary Nursery Areas" (IPNA) (as designated by the North Carolina Wildlife Resources Commission), or "Contiguous Wetlands" (as defined by the North Carolina Environmental Management Commission), or "Primary Nursery Areas" (PNA) (as designated by the North Carolina Marine Fisheries Commission).

2.3. Coastal Area Management Act (CAMA) Areas of Environmental Concern

Non-Federal applicants for any NWP in a designated "Area of Environmental Concern" (AEC) in the twenty (20) counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA), must also obtain the required CAMA permit. Construction activities for non-Federal projects may not commence until a copy of the approved CAMA permit is furnished to the appropriate Wilmington District Regulatory Field Office (Wilmington Field Office - P.O. Box 1890, Wilmington, NC 28402 or Washington Field Office - P.O. Box 1000, Washington, NC 27889).

2.4. Barrier Islands

Prior to the use of any NWP on a barrier island of North Carolina, applicants must comply with Nationwide Permit General Condition 27 (PCN).

2.5. Mountain or Piedmont Bogs

Prior to the use of any NWP in a "Mountain or Piedmont Bog" of North Carolina, applicants shall comply with Nationwide Permit General Condition 27 (PCN).

Note: The following wetland community types identified in the N.C. Natural Heritage Program document, "Classification of Natural communities of North Carolina (Michael P. Schafale and Alan S. Weakley, 1990), are subject to this regional condition.

Mountain Bogs	Piedmont Bogs
Swamp Forest-Bog Complex	Upland depression Swamp Forest
Swamp Forest-Bog Complex (Spruce Subtype)	
Southern Appalachian Bog (Northern Subtype)	
Southern Appalachian Bog (Southern Subtype)	
Southern Appalachian Fen	

2.6. Animal Waste Facilities

Prior to use of any NWP for construction of animal waste facilities in waters of the US, including wetlands, applicants shall comply with Nationwide Permit General Condition 27 (PCN).

2.7. Trout Waters

Prior to any discharge of dredge or fill material into streams or waterbodies within the twenty-five (25) designated trout counties of North Carolina, the applicant shall comply with

Nationwide Permit General Condition 27 (PCN). The applicant shall also provide a copy of the notification to the appropriate NCWRC office to facilitate the determination of any potential impacts to designated Trout Waters. Notification to the Corps of Engineers will include a statement with the name of the NCWRC biologist contacted, the date of the notification, the location of work, a delineation of wetlands, a discussion of alternatives to working in the mountain trout waters, why alternatives were not selected, and a plan to provide compensatory mitigation for all unavoidable adverse impacts to mountain trout waters.

NCWRC and NC Trout Counties

Mr. Ron Linville			
Western Piedmont Region Coordinator	Alleghany	Caldwell	Watauga
3855 Idlewild Road	Ashe	Mitchell	Wilkes
Kernersville, NC 27284-9180	Avery	Stokes	
Telephone: (336) 769-9453	Burke	Surry	

Mr. Dave McHenry			
Mountain Region Coordinator	Buncombe	Henderson	Polk
20830 Great Smoky Mtn. Expressway	Cherokee	Jackson	Rutherford
Waynesville, NC 28786	Clay	Macon	Swain
Telephone: (828) 452-2546	Graham	Madison	Transylvania
Fax: (828) 452-7772	Haywood	McDowell	Yancey

3.0 List of Corps Regional Conditions for All Nationwide Permits

The following conditions apply to all Nationwide Permits in the Wilmington District:

3.1. Limitation of Loss of Perennial Stream Bed

NWPs may not be used for activities that may result in the loss or degradation of greater than 300 total linear feet of perennial streams. The NWPs may not be used for activities that may result in the loss or degradation of greater than 300 total linear feet of ephemeral and intermittent streams that exhibit important aquatic function(s)* Loss of stream includes the linear feet of stream bed that is filled, excavated, or flooded by the proposed activity. The District Commander can waive the 300 linear foot limit for ephemeral and intermittent streams on a case-by-case basis if he determines that the proposed activity will result in minimal individual and cumulative adverse impacts to the aquatic environment. Waivers for the loss of ephemeral and intermittent streams must be in writing. This waiver only applies to the 300 linear feet threshold for NWPs. Mitigation may still be required for impacts to ephemeral and intermittent streams, on a case-by-case basis, depending on the impacts to the aquatic environment of the proposed project. [*Note: The Corps uses the Stream Quality Assessment Worksheet, located with Permit Information on the Regulatory Program Web Site, to aid in the determination of aquatic function within the intermittent stream channel.]

February 25, 2009

Office: 232 Davidson Hwy.
Concord, NC 28027

Mail to: P.O. Box 428
Concord, NC 28026-0428

Phone: 704.786.1783
Fax: 704.795.1564

Susie A. Morris, AICP
Commerce Department Zoning Administrator
Cabarrus County
Post Office Box 707
Concord, North Carolina 28026-0707

**RE: WSACC Reedy Creek Pump Station Project -- Adjacent Cell Tower Requirements
for Conditional Use Permit**

Dear Susie,

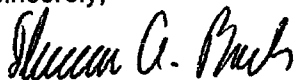
Per your request and the requirements under the Cabarrus County Conditional Use Permit (CCCUP), this is to memorialize the responsibilities that the Water and Sewer Authority of Cabarrus County (WSACC) has accepted regarding the Reedy Creek Pump Station project in order to procure a permit.

First, WSACC will not construct any structure on the Reedy Creek Pump Station site as part of this project nor in the future within the required 250-foot fall zone buffer for the existing cell tower (the Tower) currently owned and operated by American Tower on the adjoining property owned by Jerry Wayne Linker having PIN No. 55263903280000 and Real ID. No. 01-021-0004.00. The 250-foot fall zone buffer, along with other pertinent information, will be shown on the recombination survey plat as required by the CCCUP.

Second, if the Tower collapses onto the Reedy Creek Pump Station site in the future, WSACC will immediately make a site assessment and then contact the Tower owner regarding its responsibility for paying any damages done to WSACC-owned structures, equipment, and other items on the site as a result of the Tower collapse. WSACC's Attorney, Todd Phillips, has worked with WSACC staff on the review and coordination of this project, and he (or an assigned designee) will also represent us in any future evaluation and/or claims made due to a Tower collapse.

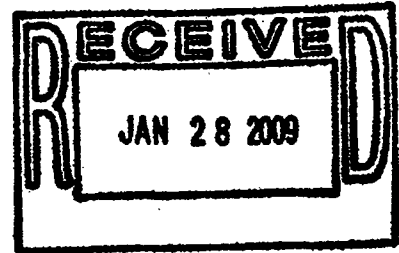
Please let us know if you have any questions and/or concerns regarding this subject, and we truly appreciate you and your staff's time and effort in regards to the CCCUP review.

Sincerely,



Thomas A. Bach, PE
Utility Systems Engineer

cc: Kassie Watts, AICP, Cabarrus County
Robbie Foxx, CZO, Cabarrus County
Todd Phillips, Esq., Hartsell & Williams, PA
Van Rowell, P.E., WSACC
Mark Lomax, WSACC
Project File



STATE OF NORTH CAROLINA
DEPARTMENT OF TRANSPORTATION

BEVERLY EAVES PERDUE
GOVERNOR

DIVISION OF HIGHWAYS
JANUARY 26, 2009

EUGENE A. CONTI, JR.
SECRETARY

Division 10
District i - Cabarrus County

Thomas A. Bach
Water & Sewer Authority of Cabarrus County
P.O. Box 428
Concord, NC 28026-0428

Subject: Driveway Permit C-1549 - *Reedy Creek Pump Station*, SR 1136 Lower Rocky River Road.

Dear Mr. Bach:

Enclosed is an executed copy of the subject Driveway Entrance Permit, which has been reviewed by the appropriate staff agencies within the Division of Highways. The permit covers the following:

Construction of one (1) twenty four foot (24') entrance as shown on attached plans. The proposed entrance is 1150' south of the intersection with Rocky River Road and on west of Lower Rocky River Road.

This approval is subject to the attached Special Provisions.

Sincerely,

Marc P. Morgan, PE
District Engineer

MPM/LPW

Atta: Special Provisions
cc: Mr. Barry S. Moose, PE, Division Engineer
File

SPECIAL PROVISIONS

1. Notify Mr. David Paige, NCDOT Inspector, at 704-982-0104 at least 24 hours prior to construction.
2. Notify owners of conflicting utilities to provide for adjustments prior to the onset of construction. Any utility that may, upon completion of the roadway widening, create a safety hazard to the traveling public, will be relocated at the expense of the developer.
3. A copy of the approved street entrance permit is to be kept on the job site during working hours.
4. Working hours shall be from 9:00 a.m. to 4:00 p.m. with all lanes open to traffic by 4:00 p.m.
5. Complete restoration including fertilizing, seeding and mulching of all areas disturbed during construction will follow within a maximum of thirty (30) working days of the initial disturbing activity in accordance with NCDOT specifications. See attached seeding schedule.
6. During construction operations, no material is to be left on the pavement and at the end of each work-day, the roadway is to be cleaned.
7. Any damages caused to the roadway, bridges, culverts or storm drains due to the construction of these entrances will be repaired by the developer at the discretion of the engineer in charge.
8. All OSHA rules and regulations shall be adhered to as pertain to this operation.
9. Contact Mr. Sean Epperson, Deputy Division Traffic Engineer, at 704-982-0101 at least 48 hours prior to construction, if any work is to be done within 500 feet of any traffic signals. Any damage to any signal related equipment will be repaired by NCDOT at the expense of the permit applicant.
10. The Division Engineer or a representative thereof, reserves the right to stop any work for non-compliance with the terms of this contract.
11. All roadway signs, removed due to this construction are to be re-installed as soon as possible.
12. During non-working hours, equipment is to be parked off of the right of way.
13. The Department of Transportation does not guarantee the right of way on this road, nor will it be responsible for any claims or damages brought by any property owner.
14. All work shall be constructed in accordance with the attached plans and typicals.
15. The Department of Transportation reserves the right to require compensation for any vegetation located within the right of way that is disturbed or destroyed due to the construction of this entrance.
16. Strict compliance with the "POLICY ON STREET AND DRIVEWAY ACCESS TO NORTH CAROLINA HIGHWAYS" manual shall be required.
17. Backfill shall achieve 95% density in accordance with AASHTO T99, as modified by the NCDOT.
18. Any work requiring equipment or personnel within 5' of the edge of the travel lane shall require a lane closure with appropriate taper.

19. Any future development or change in use other than that which is specified herein shall require additional review and an updated Traffic Impact Analysis and roadway improvements as necessitated by the additional development.
20. The installation of all required traffic signs and striping, including raised pavement markers, must meet current NCDOT specifications and is the responsibility of the permit applicant.
21. The developer, at his expense, shall correct any off-site drainage problems created or made apparent by the construction of these improvements.
22. The apron of the entrance shall be a hard surface, either concrete or asphalt.

APPLICATION IDENTIFICATION		N.C. DEPARTMENT OF TRANSPORTATION STREET AND DRIVEWAY ACCESS PERMIT APPLICATION	
Driveway Permit No.	Date of Application	January 6, 2009	
County:	Cabarrus		
Development Name: Water & Sewer Authority of Cabarrus County			
LOCATION OF PROPERTY			
Route/Road:	SR 1136/Lower Rocky River Road		
Exact Distance	1,150	<input type="checkbox"/> Miles	<input checked="" type="checkbox"/> Feet
		N	S E W
		<input type="checkbox"/>	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
From the Intersection of Route No.	SR 1136	and Route No.	SR 1139
		Toward	SR 1141
Property Will Be Used For:	<input type="checkbox"/> Residential /Subdivision <input type="checkbox"/> Commercial <input type="checkbox"/> Educational Facilities <input type="checkbox"/> TND <input type="checkbox"/> Emergency Services <input checked="" type="checkbox"/> Other		
Property:	<input type="checkbox"/> is <input checked="" type="checkbox"/> is not within Harrisburg City Zoning Area.		
AGREEMENT			
<ul style="list-style-type: none"> • I, the undersigned property owner, request access and permission to construct driveway(s) or street(s) on public right-of-way at the above location. • I agree to construct and maintain driveway(s) or street entrance(s) in absolute conformance with the current "Policy on Street and Driveway Access to North Carolina Highways" as adopted by the North Carolina Department of Transportation. • I agree that no signs or objects will be placed on or over the public right-of-way other than those approved by NCDOT. • I agree that the driveway(s) or street(s) will be constructed as shown on the attached plans. • I agree that that driveway(s) or street(s) as used in this agreement include any approach tapers, storage lanes or speed change lanes as deemed necessary. • I agree that if any future improvements to the roadway become necessary, the portion of driveway(s) or street(s) located on public right-of-way will be considered the property of the North Carolina Department of Transportation, and I will not be entitled to reimbursement or have any claim for present expenditures for driveway or street construction. • I agree that this permit becomes void if construction of driveway(s) or street(s) is not completed within the time specified by the "Policy on Street and Driveway Access to North Carolina Highways". • I agree to pay a \$50 construction inspection fee. Make checks payable to NCDOT. This fee will be reimbursed if application is denied. • I agree to construct and maintain the driveway(s) or street(s) in a safe manner so as not to interfere with or endanger the public travel. • I agree to provide during construction proper signs, signal lights, flaggers and other warning devices for the protection of traffic in conformance with the current "Manual on Uniform Traffic Control Devices for Streets and Highways" and Amendments or Supplements thereto. Information as to the above rules and regulations may be obtained from the District Engineer. • I agree to indemnify and save harmless the North Carolina Department of Transportation from all damages and claims for damage that may arise by reason of this construction. • I agree that the North Carolina Department of Transportation will assume no responsibility for any damages that may be caused to such facilities, within the highway right-of-way limits, in carrying out its construction. • I agree to provide a Performance and Indemnity Bond in the amount specified by the Division of Highways for any construction proposed on the State Highway system. • The granting of this permit is subject to the regulatory powers of the NC Department of Transportation as provided by law and as set forth in the N.C. Policy on Driveways and shall not be construed as a contract access point. • I AGREE TO NOTIFY THE DISTRICT ENGINEER WHEN THE PROPOSED WORK BEGINS AND WHEN IT IS COMPLETED. 			
2004-01	NOTE: Submit Four Copies of Application to Local District Engineer, N.C. Department of Transportation		TEB 65-04rev.
61-03419			

SIGNATURES OF APPLICANT

PROPERTY OWNER (APPLICANT)
 COMPANY Water & Sewer Authority of Cabarrus County
 SIGNATURE *John H. Powell (Eng. Director)*
 ADDRESS P.O. Box 428, Concord, NC 28026-0428
 Phone No. (704) 786-1783

WITNESS
 NAME Janice S. Sellers
 SIGNATURE *Janice S. Sellers*
 ADDRESS P.O. Box 428, Concord, NC 28026-0428
704-786-1783

AUTHORIZED AGENT
 COMPANY _____
 SIGNATURE _____
 ADDRESS _____
 Phone No. _____

WITNESS
 NAME _____
 SIGNATURE _____
 ADDRESS _____

APPROVALS

APPLICATION RECEIVED BY DISTRICT ENGINEER

 SIGNATURE DATE

APPLICATION APPROVED BY LOCAL GOVERNMENTAL AUTHORITY (when required)

 SIGNATURE TITLE DATE

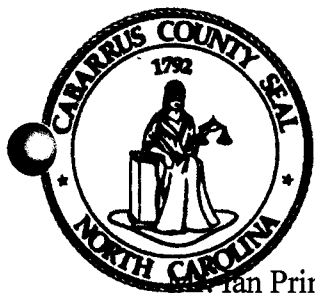
APPLICATION APPROVED BY DISTRICT ENGINEER

Mark P. [Signature]
 SIGNATURE DATE 1/26/09

INSPECTION BY NCDOT

 SIGNATURE TITLE DATE

COMMENTS:



Planning and Zoning Commission Minutes
March 19, 2009
7:00 P.M.

Mr. Ian Prince, Vice-Chair, called the meeting to order at 7:00 p.m. Members present, in addition to the Vice-Chair, were, Mr. David Baucom, Ms. Brenda Cook, Mr. Larry Ensley, Mr. Danny Fesperman, Mr. Larry Griffin, Mr. Tommy Porter, Mr. Barry Shoemaker and Mr. Ted Kluttz. Attending from the Planning and Zoning Division were, Ms. Susie Morris, Planning and Zoning Manager, Mr. Jay Lowe, Zoning Officer, Ms. Arlena Roberts, Clerk to the Board, and Mr. Richard Koch, County Attorney.

Roll Call

Approval of Minutes

Mr. Danny Fesperman, **MOTIONED, SECONDED** by Mr. Ted Kluttz to **APPROVE** the March 19, 2009, meeting minutes. The vote was unanimous.

New Business – Board of Adjustment:

The Vice-Chair, introduced Conditional Use Permit Case # CUSE2008-00010 Cabarrus County Water and Sewer Authority (WSACC)

The Vice-Chair swore in Ms. Susie Morris, Mr. Jay Lowe, Mr. Tom Bach, and Mr. Todd Phillips and opened the public hearing.

The Chair said the Board should have received revised Findings of Fact at their seats for this case.

Mr. Jay Lowe, Senior Zoning Officer, addressed the Board stating that we may revise the findings a little bit more before it is over with. He said this is Conditional Use Permit CUSE 2008-00010, the applicant is Cabarrus County Water and Sewer Authority (WSACC). They are the property owners, and the property is located at 8112 Lower Rocky River Road, Concord, NC. He said there are two parcels associated with this and there is going to be two PIN Numbers. He said only one pin number is listed in the staff report. He said there is a second PIN Number that goes with it, but that will be changed because they are in the process of combining those two properties. The property we will talk about tonight is the hatched property listed on the map included in the Board packets; the subject property. He said it also includes another piece of property that Mr. Lowe shows on the map to the board. The second PIN Number is 5626-38-9958; the number listed in the packet is 5526-39-7227. The zoning of the property in question is Countryside Residential (CR), the total property involved is not 3.4 acres as listed on the Board's copy; but it is 7.83 acres when they combine the two properties.

Mr. Lowe said the applicant has provided documentation compliant with Section 8-3, Petitioning for a Conditional Use Permit. The applicant has submitted a complete

application which includes the Findings of Fact sheet, along with a site plan showing the proposed Sewer Pump Station. A public hearing notice has been published in the Independent Tribune on March 5th and 12th, 2009. The adjacent property owners have been notified by mail and no opposition has been received. A sign has been placed on the property stating the time, date and location of the public hearing. A site plan review and approval will be required subsequent to the Board of Adjustment approval to ensure compliance with all applicable development requirements. Additional agencies are part of this review process; comments from each respective agency are provided for the Boards review.

Mr. Lowe said, staff recommends that if the Board decides to approve this Conditional Use Permit, the following be made part of the conditions:

Zoning Review Approved with Conditions - Site plan review and approval be required subsequent to the Board of Adjustment approval to ensure compliance with all applicable development requirements.

Fire Review Approved with Conditions – Gate access will need to be 20 feet wide. Two set of fire alarm plans will need to be submitted with device cut sheets. Fire department knox box will be needed at gate to hold gate code.

Health Alliance Approved with No Conditions

Soil and Water Conservation Approved with No Conditions

Erosion Control with No Conditions

NCDOT Approved with No Additional Conditions

Stormwater Review Approved with Conditions – Low density projects shall comply with each of the following standards:

1. Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.
2. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using division-approved methodology.

3. Deed restrictions and protective covenants are required by the permittee to ensure that subsequent development activities maintain the development (or redevelopment) consistent with the approved plans. The permittee shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.

Mr. Lowe said if you looked at the site plan you will notice that there is an existing cell tower. He said with today's ordinance they would have to have a 250 ft. fall zone; they have actually placed that on their site plan and have agreed not to build any structures within that 250 ft. fall zone. He said some of the fall zone comes onto their property.

Mr. Lowe recommends that the board make it a condition, that the applicant maintains that agreement, not to build any structures within the fall zone. He believes there maybe some concrete slabs or something of that nature in that fall zone, but is recommending that no structures are built in the fall zone. He said the applicant is here and will be glad answer any questions you might have.

Mr. Todd Phillips, Hartsell & Williams, PA, addressed the board stating that he is counsel for the Cabarrus County Water and Sewer Authority and is here to help answer any questions. He said this is part of what is being called the Reedy Creek Line, which is serving developing areas of western Cabarrus County, several of the neighborhoods there, the new elementary school which is being built out there, and it will help some of the conditions at C. C. Griffin Middle School. He said it is not just new things, but also assisting development that is already in place in that part of the county. He said it is a natural out growth of the growth that we are experiencing as a county. This is one of the facilities that is a necessary part of the line in order for it to work properly and benefit the citizens of Cabarrus County. He said Mr. Tom Bach is here to answer any technical questions.

Mr. Phillips would like to have it noted on the record that they have worked extensively with staff on this, and they have been very good to work with. He said all of the conditions that Mr. Lowe has outlined are conditions to which WSACC does agree and will comply.

There being no further discussion the Vice-Chair closed the public hearing.

There being no further discussion, Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Larry Ensley, to Approve Conditional Use Permit CUSE2008-00010 with the following conditions:

1. Site plan review and approval be required subsequent to the Board of Adjustment approval to ensure compliance with all applicable development requirements.

2. Gate access will need to be 20 feet wide. Two set of fire alarm plans will need to be submitted with device cut sheets. Fire department knox box will be needed at gate to hold gate code.
3. Low density projects shall comply with each of the following standards:
 - a. Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable.
 - b. All built-upon area shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using division-approved methodology.
 - c. Deed restrictions and protective covenants are required by the permittee to ensure that subsequent development activities maintain the development (or redevelopment) consistent with the approved plans. The permittee shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future development and redevelopment maintains the site consistent with the approved project plans.
4. Applicant agrees not to build any structure within the 250' Fall Zone.

The vote was unanimous.

See Findings of Fact.

**FINDINGS OF FACT
CASE NO. CUSE 2008-00010
WATER AND SEWER AUTHORITY OF CABARRUS COUNTY, APPLICANT
8112 LOWER ROCKY RIVER ROAD
CONCORD, NC**

1. Those "Additional Facts" as contained in the staff report.
2. Those responses to the General Requirements contained in the Applicant's conditional use application.
3. The use as proposed is not detrimental to the public health, safety or general welfare.

This is necessary sewer infrastructure for an area of the County in need of such service. The applicant has designed a facility in compliance with federal, state and local regulations and has agreed to comply with the conditions imposed by all regulating authorities.

4. The use as proposed is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, etc.

This use is in an area required for it to operate properly.

5. The use as proposed will not violate neighborhood character nor adversely affect surrounding land uses.

The design contemplates as much material buffer as possible, along with some reforestation. It contains an odor control system.

6. The use as proposed will comply with the general plans for the physical development of the County as embodied in the Zoning Ordinance or in the area development plans that have been adopted.

The use as proposed will serve the Reedy/McKee Creek drainage basins where the County contemplates growth.

Mr. Ted Kluttz recognized Thomas McPherson and his mother Judy McPherson. He said Thomas is working toward a communications merit badge; and as a part of that he has to attend a public meeting.

Directors Report

Ms. Susie Morris, Planning and Zoning Manger addressed the Board. She asked the board members to notify her or Lynn Roberts if they are not going to be able to attend a meeting. She said when it comes to the conditional use cases; at this point we only have two alternates, so if we have three people that need to miss the same meeting there is a potential that the cases can end up being tabled. We need to know if you are not going to be here so that we make sure we rotate the alternates; if one cannot be here then we go to the next one.

She reminded the Board about the Quasi-Judicial training being held in Kannapolis at the train station, on April 9, 2009, at 6:30 p.m. conducted by Mr. Bill Duston, Centralina Council of Governments. She said right now it is strictly geared toward public and elected officials and not staff. She passed around a sign up sheet.

Ms. Morris said the rezoning for the Central Area Plan were adopted, the Board of Commissioners provided a 60 day window where folks could turn in rezoning applications back to what it was zoned prior to the adoption of the rezoning that night. We have received about 10 or 11 applications. She said there are a couple that we think the folks may have been a little bit confused on what the purpose of it was; so we may end up with a few less cases. She said we are looking at around 10 to 12 rezoning cases next month; all of the cases are going to move forward as a group but each case will have to be heard individually. She said there will be 12 rezoning applications to hear and 12 public hearings.

Mr. Prince asked if it would be more appropriate to split them up over two meetings.

Ms. Morris said to help with the cost of processing, the Board of Commissioners wanted to keep it together.

She said if you cannot attend next months meeting, please let us know so we can get some one to sit in your place. She said these are legislative decisions, but for the expedited voting there is still the 75 % requirement.

There being no further discussion, Mr. Larry Griffin, **MOTIONED, SECONDED** by Mr. Danny Fesperman to **Adjourn** the meeting. The vote was unanimous. The meeting ended at 7:22 p.m.

APPROVED BY:



Todd Berg, Chairman

SUBMITTED BY:



Arlena B. Roberts

ATTEST BY:

Susie Morris
Planning and Zoning Manager