



DEPARTMENT OF THE ENVIRONMENT

2500 Broening Highway, Baltimore, Maryland 21224
Area Code 301 • 631-3609

William Donald Schaefer
Governor

Martin W. Walsh, Jr.
Secretary

WATER QUALITY CERTIFICATION

NABOP RR 89-1112-2 : CERTIFICATION NO. 89-WQ-0773

PUBLIC NOTICE DATE 11-20-89 DNR NO.

TO: Dunkirk Mall Limited
Partnership
c/o McCarthy & Assoc.
14458 Old Hill Rd., Suite 201
Upper Marlboro, Maryland 20772

RE: To construct a commercial development
requiring fill in 0.11 acre of nontidal
wetland for road crossings and 0.06 acre
for lot development for the proposed
Dunkirk Shopping Center.

This water quality certification is issued under authority of Section 401 of the Federal Water Pollution Control Act and its Amendments. A copy of this required certification has been sent to the Corps of Engineers. This certification does not relieve the applicant of responsibility for obtaining any other approvals, licenses or permits in accordance with federal, state, or local requirements and does not authorize commencement of the proposed project. The Maryland Department of the Environment has determined from a review of the plans that the construction of this facility and its subsequent operation as noted herein will not violate Maryland's water quality standards.

The applicant shall comply with the conditions marked (X) below:

(X) 1. The proposed project shall be constructed in a manner which will not violate Maryland's Water Quality Standards as set forth in COMAR 26.08.02. The applicant is to notify this department ten (10) days prior to commencing work. Verbal notification is to be followed by written notice within ten (10) days.

(X) 2. The proposed project shall be constructed in accordance with the plan and its revisions as approved by the:

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- (a) Corps of Engineers
- (b) Water Management Administration

(x) 3. Construction of the proposed project shall begin only when all the required licenses, permits, notifications of approval or letters of permission have been obtained from the appropriate approving authorities.

(x) 4. All fill and construction materials not used in the project shall be removed and disposed of in a manner which will prevent their entry into waters of this State.

(x) 5. The disturbance of the bottom of the water and sediment transport into the adjacent waters of the State shall be minimized.

(x) 6. During the construction period, all persons involved in the project shall use sanitary facilities and adhere to sanitary wastewater disposal practices and solid waste disposal practices as approved by the local health department.

(x) 7. The applicant shall notify this Department upon transferring this ownership or responsibility for compliance with these conditions to another person. The new owner/operator shall request transfer of this Water Quality Certification to his name.

8. Construction of the bulkhead shall be completed prior to filling behind the bulkhead. The bulkhead shall be constructed in such a manner so as to prevent the loss of fill material to waters of this State. Only clean fill, which is free of organic, metallic or toxic materials shall be used.

(x) 9. The applicant shall obtain and certify compliance with a grading and sediment control plan which has been approved by the:

- (a) Calvert Soil Conservation District or
- (b) Erosion and Control Representative, Division of Environmental Services, Bureau of Highways, Department of Public Works of the City of Baltimore or
- (c) The Department of the Environment, Sediment and Storm Water Control

The approved plan shall be available at the project site during all phases of construction.

(x) (10) Stormwater runoff from impervious surfaces shall be controlled to prevent the washing of debris into the waterway. The natural vegetation shall be maintained and restored when disturbed or eroded. Stormwater drainage facilities shall be designed, implemented, operated and maintained in accordance with the requirements of the applicable approving authority.

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() (11) The spoil disposal area(s), include dikes where applicable, shall be constructed to limit the suspended solids content in the discharge to the waters of this State to four hundred (400) parts per million or less.

(x) (12) instream work shall be done only in the period June 16 through February 28

(X) (13) Dunkirk CLH-I Limited Partnership shall provide to the Water Quality Certification Program a stormwater management plan, including cross-sections, which incorporates effective pollutant removal methods in uplands to treat a minimum of the first one-half inch of runoff from impervious surfaces prior to release of stormwater into State waters or wetlands. There shall be no discharge of untreated stormwater to State waters or wetlands. The plan shall be provided by Dunkirk CLH-I Limited Partnership by July 1, 1990 and shall be implemented by January 1, 1991.

Failure to comply with these conditions shall constitute reason for suspension or revocation of the Water Quality Certification and legal proceedings may be instituted against the applicant in accordance with the Annotated Code of Maryland. In granting this certification, the Department reserves the right to inspect the operations and records regarding this project at anytime.

CERTIFICATION APPROVED

John S. Howard
Water Management Administration

1/4/93
Expiration Date



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
P.O. BOX 1715
BALTIMORE, MD 21203-1715

REPLY TO
ATTENTION OF

April 29, 1996

Operations Division

Subject: CENAB-OP-RP(HOWLIN, EDWARD B.) 1989-03332-13

Mr. Edward B. Howlin, Jr.
c/o Wilkerson & Associates, Inc.
Attn: Mr. Masoud Ghatineh
P.O. Box 17
Dunkirk, Maryland 20754

Dear Mr. Ghatineh:

I am replying to your subject request dated April 22, 1996, for Department of the Army (DA) reauthorization to adversely impact 0.17 acres of jurisdictional nontidal wetlands and stream channel for two minor road crossings and lot fill in a tributary to Hall Creek, Calvert County, Maryland. This Nationwide Permit verification supersedes the letter CENAB-OP-RP (HOWLIN, EDWARD B.) 1989-03332-13 issued on January 3, 1994. This verification includes the addition of a riser structure to be installed in an existing, authorized stormwater management facility.

This waterway has been determined to be within our regulatory jurisdiction and the activity proposed does require DA authorization.

Our evaluation has determined that the proposed work, if accomplished in accordance with the enclosed plan(s), is authorized by Nationwide Permit(s) (NWP) for purposes of Section 10 of the River and Harbor Act of 1899 and/or Section 404 of the Clean Water Act as published in the November 22, 1991 issue of the Federal Register, Title 33, part 330, NWP number(s) 26, provided all State authorizations are granted. If any of the information contained in the application and/or plan(s) is later found to be in error, this authorization may be subject to modification, suspension, or revocation.

Enclosed is a list of conditions which must be followed for purposes of the NWP(s) and the management practices which should be followed in performing the work. In addition, by copy of this letter, we are forwarding your application to the Maryland Department of the Environment for a Water Quality Certification (WQC). The conditions of the WQC will be included as conditions of the NWP.

This verification is valid until January 21, 1997, unless the NWP is modified, reissued, or revoked. It is incumbent upon you to remain informed of changes to the NWP's. We will issue a public notice announcing the changes when they occur. Furthermore, if you commence or are under contract to commence this activity before the date the NWP is modified or revoked, you will have 12 months from the date of the modification or revocation to complete the activity under the present terms and conditions of this NWP.

After you have obtained all the required State and/or local authorizations, including WQC, and complied with the appropriate local critical area regulations, you may proceed with the authorized work.

If you have any questions concerning this matter, please call Ms. Nicholle Braspennickx of this office at (301) 390-2542.

Sincerely,


Thomas J. Filip III
Chief, Potomac Basin Section

Enclosures

Copy Furnished:

Mr. Edward B. Howlin
MDE - Ms. Cindy Nethen

Nationwide Permit Conditions:

General Conditions: The following general conditions must be followed in order for any authorization by a nationwide permit to be valid:

1. **NAVIGATION.** No activity may cause more than a minimal adverse effect on navigation.
2. **PROPER MAINTENANCE.** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. **EROSION AND SILTATION CONTROLS.** Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills must be permanently stabilized at the earliest practicable date.
4. **AQUATIC LIFE MOVEMENTS.** No activity may substantially disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.
5. **EQUIPMENT.** Heavy equipment working in wetlands must be placed on mats or other measures must be taken to minimize soil disturbance.
6. **REGIONAL AND CASE-BY-CASE CONDITIONS.** The activity must comply with any regional conditions which may have been added by the division engineer (see CFR 330.4(e)) and any case specific conditions added by the Corps.
7. **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. Information on Wild and Scenic Rivers may be obtained from the National Park Service and the U.S. Forest Service.
8. **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.
9. **WATER QUALITY CERTIFICATION.** In certain states, an individual state water quality certification must be obtained or waived (see 33 CFR 330.4(c)).
10. **COASTAL ZONE MANAGEMENT.** In certain states, an individual coastal zone management consistency concurrence must be obtained or waived (see 33 CFR 330.4(d)).
11. **ENDANGERED SPECIES.** 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, or which is likely to destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the district engineer if any listed species or critical habitat might be affected or is in the vicinity of the project and shall not begin work on the activity until notified by the district engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized. Information on the location of threatened and endangered species and their critical habitat can be obtained from the U.S. Fish and Wildlife Service and National Marine Fisheries Service. (see 33 CFR 330.4(f))
12. **HISTORIC PROPERTIES.** No activity which may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the DE has complied with the provisions of 33 CFR 325, appendix C. The prospective permittee must notify the district engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)).
13. **NOTIFICATION.** a) Where required by the terms of the NWP, the prospective permittee must notify the District Engineer as early as possible and shall not begin the activity:
 - (1) Until notified 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) If notified by the District or Division engineer that an individual permit is required; or
 - (3) Unless 30 days have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer.

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

b) The notification must be in writing and include the following information and any required fees:

(1) Name, address and telephone number of the prospective permittee;

(2) Location of the proposed activity;

(3) Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other MWP(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;

(4) Where required by the terms of the MWP, a delineation of affected special aquatic sites, including wetlands; and

(5) A statement that the prospective permittee has contacted:

(i) The USFWS/NMFS regarding the presence of any Federally listed (or proposed for listing) endangered or threatened species or critical habitat in the permit area that may be affected by the proposed project; and any available information provided by those agencies. The locations of the offices of the USFWS in Pennsylvania and in Maryland, respectively, are as follows:

U.S. Fish and Wildlife Service
315 South Allen Street
Suite 322
State College, Pennsylvania 16801

U.S. Fish and Wildlife Service
1825 Virginia Street
Annapolis, MD 21401

The location of the office of the NMFS is as follows:

Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Habitat and Protected Resources
1 Blackburn Drive
Gloucester, Massachusetts 01930-2298

(ii) The SHPO regarding the presence of any historic properties in the permit area that may be affected by the proposed project; and the available information, if any, provided by that agency. The locations of the offices of the SHPO in Pennsylvania and Maryland, respectively, are as follows:

Pennsylvania Historical and Museum Commission
Bureau for Historic Preservation
Box 1026
Harrisburg, Pennsylvania 17120

Maryland Historical Trust
100 Community Place
Crownsville, Maryland 21032

The location of the office of the SHPO in the District of Columbia is as follows:

D.C. Department of Consumer and Regulatory Affairs
Historic Preservation Division
614 H Street, N.W.
Room 305
Washington, D.C. 20001

c) The joint Federal/State permit application form may be used as the notification but must clearly indicate that it is a PDN and must include all of the information required in (b)(1)-(5) of General Condition 13.

d) In reviewing an activity under the notification procedure, the District Engineer will first determine whether the activity will result in more than minimal individual or cumulative adverse environmental effects or will be contrary to the public interest. The prospective permittee may, at his option, submit a proposed mitigation plan with the pre-discharge notification to expedite the process and the District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. 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 nationwide permits and the need for mitigation to reduce the project's adverse environmental effects to a minimal level. The District Engineer will upon receipt of a notification provide immediately (e.g. facsimile transmission, overnight mail or other expeditious manner) a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, and, if appropriate, the National Marine Fisheries Service. With the exception of NWP 37, these agencies will then have 5 calendar days from the date the material is transmitted to telephone the District Engineer if they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 10 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects are minimal, he will notify the permittee and include any conditions he deems necessary. If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then he 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; or (2) that the project is authorized under the nationwide permit subject to the applicant's submitting a mitigation proposal that would reduce the adverse effects to the minimal level. This mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee elects to submit a mitigation plan, the DE will expeditiously review the proposed mitigation plan, but will not commence a second 30-day notification procedure. If the net adverse effects of the project (with the mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant informing him that the project can proceed under the terms and conditions of the nationwide permit.

(e) Wetlands Delineations: 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 site. There may be some delay if the Corps does the delineation. Furthermore, the 30-day period will not start until the wetland delineation has been completed.

(f) Mitigation: Factors that the District Engineer will consider when determining the acceptability of appropriate and practicable mitigation include, but are not limited to:

(1) To be practicable the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of overall project purposes;

(2) To the extent appropriate, permittees should consider mitigation banking and other forms of mitigation including contributions to wetland trust funds, which contribute to the restoration, creation, replacement, enhancement, or preservation of wetlands.

Furthermore, examples of mitigation that may be appropriate and practicable include but are not limited to: reducing the size of the project; establishing buffer zones to protect aquatic resource values; and replacing the loss of aquatic resource values by creating, restoring, and enhancing similar functions and values. In addition, mitigation must address impacts and cannot be used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the nationwide permits (e.g. 5 acres of wetlands cannot be created to change a 6 acre loss of wetlands to a 1 acre loss; however, the 5 created acres can be used to reduce the impacts of the 6 acre loss).

Regional Condition - The "Notification" provision of nationwide permits 5, 7, 13, 14, 17, 18, 21, 26, 33, 34, 37, 38, and, as required by regional condition, nationwide permits 11, 23, 28, and 35, shall be satisfied by the submission of a permit application prepared in accordance with the established Corps of Engineers permit application procedures for that locality. Drawings are to be submitted on 8 1/2 by 11 - inch paper. The Corps' 30-day review period shall commence with the receipt of a completed application at the Corps District Office. In addition to the requirements in (b)(1) - (5) above, for Nationwide permit #28 the following information must also be submitted:

a. Drawings showing the configuration of existing structures; and

b. For projects located on a waterway containing an authorized Federal Navigation Channel, the drawings must indicate the distance to the edge of the authorized channel. In addition to the requirements in (b) (1) - (5) above, for nationwide permit 35 the following information must also be submitted:

a. A survey of submerged aquatic vegetation; and

b. Drawings showing the dimensions (width and depth) of previous dredging.

Section 404 Only Condition:

In addition to the General Condition, the following conditions apply only to activities that involve the discharge of dredged or fill material and must be followed in order for authorization by the nationwide permits to be valid:

1. **WATER SUPPLY INTAKES.** No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for repair of the public water supply intake structures or adjacent bank stabilization.
2. **SHELLFISH PRODUCTION.** No discharge of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by nationwide permit 4.
3. **SUITABLE MATERIAL.** No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, etc.) and material discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).
4. **MITIGATION.** Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e., on-site), unless the DE has approved a compensation mitigation plan for the specific regulated activity.
5. **SPAWNING AREAS.** Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.
6. **OBSTRUCTION OF HIGH FLOWS.** To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).
7. **ADVERSE IMPACTS FROM IMPOUNDMENTS.** If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent practicable.
8. **WATERFOUL BREEDING AREAS.** Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.
9. **REMOVAL OF TEMPORARY FILLS.** Any temporary fills must be removed in their entirety and the affected areas returned to their pre-existing elevation.

Nationwide Permit 26 (33 CFR 330 Appendix A)

(26) Headwaters and Isolated Waters Discharges. Discharges of dredged or fill material into headwaters and isolated waters provided:

a. The discharge does not cause the loss of more than 10 acres of waters of the United States;

b. The permittee notifies the district engineer if the discharge would cause the loss of waters of the United States greater than one acre in accordance with the "Notification" general condition. For discharges in special aquatic sites, including wetlands, the notification must also include a delineation of affected special aquatic sites, including wetlands. [Also see 33 CFR 330.1(e)]; and

c. The discharge, including all attendant features, both temporary and permanent, is part of a single and complete project.

For the purposes of this nationwide permit, the acreage of loss of waters of the United States includes the filled area plus waters of the United States that are adversely affected by flooding, excavation or drainage as a result of the project. The ten-acre and one-acre limits of NWP 26 are absolute, and cannot be increased by any mitigation plan offered by the applicant or required by the DE.

Subdivisions: For any real estate subdivision created or subdivided after October 5, 1984, a notification pursuant to subsection b of this nationwide permit is required for any discharge which would cause the aggregate total loss of waters of the United States for the entire subdivision to exceed one (1) acre. Any discharge in any real estate subdivision which would cause the aggregate total loss of waters of the United States in the subdivision to exceed ten (10) acres is not authorized by this nationwide permit; unless the DE exempts a particular subdivision or parcel by making a written determination that: (1) The individual and cumulative adverse environmental effects would be minimal and the property owner had, after October 5, 1984, but prior to January 21, 1992, committed substantial resources in reliance on NWP 26 with regard to a subdivision, in circumstances where it would be inequitable to frustrate his investment-backed expectations, or (2) that the individual and cumulative adverse environmental effects would be minimal, high quality wetlands would not be adversely affected, and there would be an overall benefit to the aquatic environment. Once the exemption is established for a subdivision, subsequent lot development by individual property owners may proceed using NWP 26. For purposes of NWP 26, the term "real estate subdivision" shall be interpreted to include circumstances where a landowner or developer divides a tract of land into smaller parcels for the purpose of selling, conveying, transferring, leasing, or developing said parcels. This would include the entire area of a residential, commercial or other real estate subdivision, including all parcels and parts thereof. (Section 404).