

FEB 11 '98 11:20 FROM PPI APPROVED RE TO 004170

LEONARD S. RINDNER, PWS

Environmental Planning Consultant
Landscape Architecture
Land Planning

7113 Hickory Nut Drive
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February 10, 1998

Mr. Donald Munday
B.K. Barringer & Associates, Inc.
104 Westfield Center
Mooresville, North Carolina 28115

Re: Permitting Overview for ± 75 Acre Site on Proposed Weddington Road and Rocky River,
Cabarrus County, North Carolina

Dear Donald:

I visited the proposed project site on February 10, at your request to review the delineated wetlands and streams and summarize potential regulatory issues.

Background

The site is adjacent to Rocky River in the Yadkin Basin (Water Classification - C). Most of the jurisdictional wetland areas are in the 100 year floodplain of the Rocky River. A headwater stream channel was also delineated and wetlands were also identified. It was evident that the floodplain was recently flooded during recent rain events. Many areas of the floodplain were partially inundated, ponded, or very saturated soil. Several areas of the wetlands exhibited characteristic Obligate (OBL) and Facultative Wet (FACW) vegetation typical of seasonally flooded to semi-permanently flooded wetland areas. The wetlands on this site can be expected to achieve very high scores relative to water storage, pollution removal, bank stabilization, aquatic life resources utilizing Guidance for Rating the Values of Wetlands in North Carolina - Fourth Version. The wetlands within the floodway fringe of the Rocky River floodplain have likely been confirmed as "below headwaters" by the U.S. Army Corps of Engineers (USACE). Wetlands outside the floodway fringe including the smaller stream and adjacent wetlands have likely been verified as headwaters by the USACE.

Description

Wetland Hydrology and Hydric Soils

Wetland hydrology is provided by a seasonal flooding, a seasonal high water table, and captured surface runoff behind the natural riparian berm along the Rocky River. These wetlands can be classified as Palustrine Forested Broad Leaved, Scrub Shrub, and Emergent, Temporarily to Seasonally Flooded (PFO1A, PFO1C, PSS1A, PSS1C, PEM1C). According to Soil Conservation Service, Technical Guide-Section II-A-2, June 1991, Chewacla soils in the floodplain are listed as Map Units with inclusions of Hydric Soils in Cabarrus County.

Hydrophytic Vegetation

Vegetation in wetland areas and along tributaries is dominated by Facultative, Facultative Wet, and Obligate Vegetation and include willow oak, swamp chestnut oak, green ash, red maple, sweet gum, alder, willow, silky dogwood, greenbriar, poison ivy, and others. Currently present in the herbaceous layer are plants such as sedges and soft rush. During the growing season several other species are likely, including jewelweed, cardinal flower, and others.

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Permitting Issues

- The Jurisdictional Waters found which are "headwaters" (small stream and associated wetlands) could qualify for use under a Nationwide (General) Permit #26, if approved. Based on current regulations a "Notification" application to the U.S. Army Corps of Engineers (USACE) and/or the NCDENR Division of Water Quality (NCDWQ) to utilize this permit is not required for impacts to less than 1/3 acre of jurisdictional headwaters (streams and wetlands) or to impacts less than 150 lf of surface waters and if no other or additional Nationwide Permits (i.e. utility (NWP #12), road crossing (NWP #14), etc.) is required. Notification of impacts of less than the preconstruction notification thresholds must be made to the USACE within 30 days of the impact. Total project impacts involving more than 3 acres of headwaters or more than 500 LF of surface waters are not eligible for NWP #26. Minimization measures such as plan modifications may be required for impacts over the minimum thresholds to reduce impacts. Mitigation will be required by the USACE and NCDWQ for stream and wetland impacts over the minimum thresholds.

- The wetlands found to be "below headwaters" do not qualify for Nationwide Permit #26. Nationwide Permit #18 for a minor discharge may be available with a pre-construction notification but may be limited to only 1/10th acre. Individual Permits are required for all activities in Waters of the U.S. that do not qualify for a Nationwide Permit and are reviewed on a case by case basis by the USACE and other agencies, including the North Carolina Division of Water Quality (NCDWQ), United States Fish and Wildlife Service (USFWS), North Carolina Wildlife Resource Commission (NCWRC), the State Historic Preservation Office (SHPO), and others. Projects that require Individual Permits are those which in the opinion of the review agencies may have a significant impact on Waters of the U.S. due to their size, location, or other factors. Also the USACE may use Discretionary Authority to elevate any NWP to Individual Permit status if the District Engineer determines that issuance of a NWP may have more than minimal impact. As with NWP's, a 401 Water Quality Certification from NCDWQ is a requirement. There is also a Public Notice. All adjacent riparian property owners will be notified. Interested parties and agencies will receive the Public Notice through the mail. By a Memorandum of Agreement, the EPA and the USACE requires a strict mitigation sequence (no practicable alternative [avoidance], minimization, and compensatory mitigation, be followed for all Individual Permits. It is generally understood that obtaining an Individual Permit may be difficult. Establishing that there are no practicable alternatives is the most important part and most difficult in the evaluation process.

- Minimization conditions and mitigation will be required for wetland and stream impacts over the Nationwide Permit thresholds and permitted impacts if an Individual Permit is authorized. Mitigation ratios for Individual Permits are determined by the USACE. If the states mitigation rules apply or are utilized by the USACE, the ratios are relative to the wetland's relationship and proximity to surface waters on the USGS Map. A 4:1 restoration ratio (6:1 for creation, 8:1 enhancement, and 20:1 for preservation) is required for impacts within 150' of surface waters. Mitigation for wetland impacts from 150' to 1000' from a surface waters will require a 2:1 ratio for restoration (5:1 for creation, 4:1 for enhancement, 10:1 for preservation. Stream mitigation will be required for approved impacts to channels in excess of the linear footage thresholds. Mitigation ratios may be at a 2:1 ratio. Mitigation can include relocating, recreating, or restoration of a degraded stream including meanders, substrate, banks, and riparian buffers. If a permit is authorized - there is potential of participating in recently created state Wetland Restoration Program (WRP) for wetland and stream restoration to meet mitigation requirements. The fee is \$24,000/acre times the ratio for wetlands and \$125/lf for streams.

* In some cases, the USACE has determined that impacts on parcels subdivided from larger tracts are to be considered cumulatively. If this is the case than the thresholds may not apply. Therefore, wetland and stream impacts may be considered in relation to previously authorized permits.

- 1/3 ACRE - 3 ACRES
150' - 500' Stream

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- Wet detention ponds for storm water treatment will be a condition of a permit that requires an application if the land use is commercial, industrial, business, institutional, and/or similar.

- Permits must meet standard and general conditions, i.e. endangered species, historic properties, and other particular conditions. Comments are likely with an application from USFWS, SHPO (State Historic Preservation Office), and other agencies. Based on the site visit it seems that the site is not conducive to the presence of endangered species or historical/archaeological sites. However, concurrence from these agencies may be necessary and additional surveys may be required.

Recommendations

- The wetlands in the Rocky River floodplain will be seen as extremely valuable to all the regulatory agencies and environmental groups. Obtaining a permit to impact these wetlands could be extremely complicated. Proving that there is no practicable alternative (avoidance), which can include a reduced scope, or alternative site, will be required. While a permit can be applied for, any proposed impacts (except very minor) will likely be denied.

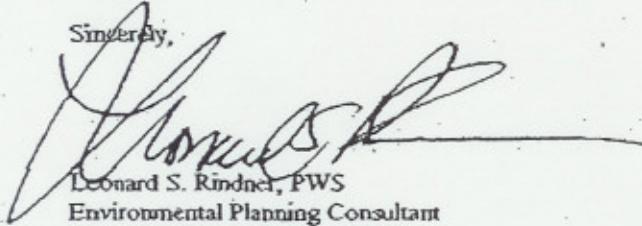
- There is a greater potential in acquiring a permit to fill a portion of the smaller headwater wetland area to maximize developable area. Nationwide Permit #26 is currently available, however, proposed impacts will be subject to the thresholds. Avoidance and minimization of impacts to the wetlands in the Rocky River floodplain may help the permitting negotiations.

- A pre-application meeting should be held with the NCDENR and the USACE prior to submitting any application. It is highly recommended that these preliminary discussions occur before a large amount of time is spent on planning.

Please let me know if you have any questions or require further explanation. I look forward to working with you again in the future.

Thanks.

Sincerely,



Leonard S. Rindner, PWS
Environmental Planning Consultant
NC Landscape Architect #578

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STATEMENT OF QUALIFICATIONS - WETLAND PLANNING SERVICES

Over the past 20 years he has participated in project planning, design, and development on a wide range of Commercial, Residential, Institutional, Recreational, Industrial, and Mixed-Use Developments. Project involvement has also included roadway and utility planning. This land planning background has enabled him to better understand, represent, and advocate development objectives while demonstrating sensitivity to environmental concerns and laws that protect the overall environment with the regulatory community. He has provided Wetland Planning Services since 1989.

Professional Education and Experience

May, 1975 - Bachelor of Environmental Science, S.U.N.Y., College of Environmental Science and Forestry, Syracuse, N.Y. (Bachelor of Landscape Architecture in May, 1976)

Professional Licensing and Affiliations

Professional Wetland Scientist - Certified by Society of Wetland Scientists
Registered Landscape Architect - NC 578, FL 788, Member of the ASLA

References

LandDesign Engineering Services, Inc. - Mr. Dale C. Stewart, Mr. Terry Cragle, Mr. Ray Waugh
LandDesign, Inc. - Mr. Larry Best, Mr. Brad Davis, Mr. Ed Schweitzer
The Crosland Group - Mr. Jim Merrifield, Mr. Steve Vermillion, Mr. Peter Pappas
The Crosland Land Company - Mr. Bill Daleure, Mr. Bill Gartland
YMCA of Greater Charlotte - Mr. Bill Climer
The Harris Group - Mr. Terry Knotts, Mr. Ronnie Elehan, Ms. Kathy Melvin
Crescent Resources Inc. - Residential and Commercial Divisions
The Bissell Companies - Mr. H.C. Bissell, Mr. Bailey Patrick, Mr. Yates Pharr
B.V. Belk Investments - Mr. Tom Scott
Liberty Capital Trust - Mr. John Brandon
Koury Corporation - Mr. John Musto
Rhein Interests - Mr. Tom Tucker, Mr. Jim Medall, Mr. John Roach
ColeJenes and Stone - Mr. M. Cole, Ms. S. Freyler, Ms. J. Alexander, Ms. A. Merriman
Springland Inc. (Close Family Property) - Mr. Gene Purser
Alliance Properties - Mr. Paul Chase
Brown Investment - Mr. Chester Brown
Yarbrough-Williams Associates - Mr. Marc Houle, Mr. Sam Williams
WK Dickson and Associates - Mr. Kevin Caldwell, Mr. Frank Crai
ESP Associates - Ms. Wanda Fuller, Mr. David Tribble
Design Resource Group - Mr. Jim Guyton, Ms. Desire McSorley
Black & Veatch - Mr. Jeff Davis
Paces Development/Trammell Crow Residential - Mr. Tom Shoup
Landcraft Development - Mr. Scott Stover

Consultation provided to other Land Planning and Engineering Firms, and Development Companies. He has developed strong working relationships with regulatory officials of the:

- US Army Corps of Engineers, Wilmington District - Asheville and Raleigh Offices
- US Army Corps of Engineers, Charleston District
- NC Division of Environmental Management - Raleigh, Mooresville, Winston-Salem