



STATE OF NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF LAND USE REGULATION
 Mail Code 501-02A, P.O. Box 420, Trenton, New Jersey 08625-0420
 Telephone: (609) 777-0454 or Fax: (609) 777-3656
 www.state.nj.us/dep/landuse



PERMIT

In accordance with the laws and regulations of the State of New Jersey, the Department of Environmental Protection hereby grants this permit to perform the activities described below. This permit is revocable with due cause and is subject to the limitations, terms and conditions listed below and on the attached pages. For the purpose of this document, "permit" means "approval, certification, registration, authorization, waiver, etc." Violation of any term, condition or limitation of this permit is a violation of the implementing rules and may subject the permittee to enforcement action.

Approval Date
 01/26/2015
 Expiration Date
 01/25/2020

Permit Number(s): 0000-03-0013.4 FWW070002 0000-03-0013.4 FWW070004 0000-03-0013.4 FWW130001	Type of Approval(s): FWGP11 outfall structure(s) FWTW2 transition area waiver FWGP10B minor roadcrossing	Enabling Statute(s): N.J.S.A. 13:9B FWPA N.J.S.A. 58:10A WPCA
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Permittee: Bi-County Development Corporation	Site Location: Block: 3001 Lots: 1, 4, 15 & 18 Municipality: Oakland Borough County: Bergen
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Description of Authorized Activities:

This permit authorizes the disturbance of 5,140 square feet (0.118 of an acre) of State open waters and transition areas for the construction of three stormwater outfall structures, and the filling of 6,746 square feet (0.155 of an acre) of wetlands for construction of a roadway in connection with the construction of a 204-unit residential development on the 83.48 acre property, known as Lots 1, 4, 15 and 18, Block 3001, Oakland Borough, Bergen County (the "Property"). This authorization to conduct regulated activities in a wetland includes a Water Quality Certificate for these activities. This permit also authorizes the disturbance of 74,874 square feet (1.72 acres) of transition area for the construction of 14 single-family houses and two detention basins under a Transition Area Waiver pursuant to N.J.A.C. 7:7A-6.1(d). As compensation, all remaining wetlands (2.92 acres) and transition area (12.34 acres) on the Property will be preserved through deed restriction, prior to the commencement of the project. Commencement of the project includes but is not limited to site disturbance, pre-construction earth movement, and construction. In addition, four areas of upland forest, totaling 16.81 acres of the Property, will also be preserved through deed restriction.

THIS PERMIT IS NOT VALID AND NO WORK IS AUTHORIZED IN WETLANDS OR TRANSITION AREAS UNTIL ALL "PRE-CONSTRUCTION CONDITIONS" CONCERNING THE PROPERTY ARE COMPLETED.

Prepared by: <i>Rebecca Grike</i> _____ Rebecca Grike	Received and/or Recorded by County Clerk:
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THIS PERMIT IS NOT EFFECTIVE AND NO CONSTRUCTION APPROVED BY THIS PERMIT, OR OTHER REGULATED ACTIVITY, MAY BE UNDERTAKEN UNTIL THE APPLICANT HAS SATISFIED ALL PRE-CONSTRUCTION CONDITIONS AS SET FORTH HEREIN.

This permit is not valid unless authorizing signature appears on the last page.

PRE-CONSTRUCTION CONDITIONS:

1. The applicant/owner shall sign a Department approved conservation restriction for **all** wetlands; the entire transition area, as modified herein, including the compensation areas; and the 16.81 acres comprised of four areas, labeled "Additional Conservation Area (A), (B) (C) and (D)" on the Property, as depicted on the plan approved herein. The conservation restriction shall be included on the deed, and recorded in the Bergen County Clerk's office. Said conservation restriction shall run with the land and be binding upon all successive owners. Any regulated activities undertaken on the Property before a copy of the recorded conservation restriction is submitted to the Department shall be a violation of the Freshwater Wetlands Protection Act. The conservation restriction shall conform to the format and content of the model conservation restriction entitled "Transition Area & Associated Wetlands Conservation Restriction/easement" and to the model conservation restriction entitled "Forest Preservation Area," both of which can be found online at www.state.nj.us/dep/landuse.
2. The conservation restriction shall be filed with the Bergen County Clerk within 60 days of the issuance of this permit and a complete copy of the recorded conservation restriction shall be delivered to the Department, Division of Land Use Regulation within 10 business days of the grantor's receipt of said recorded conservation restriction. In all events, the conservation restriction shall be recorded prior to any site disturbance, pre-construction earth movement or construction of the project on the Property.
3. The property owner or grantor may reserve to itself in the conservation restriction the right to abandon the project. At any time prior to the start of any site disturbance, including pre-construction earth movement, disturbance of any vegetation or construction of the project on the Property, the owner or grantor may inform the Department in writing that it is abandoning the project and request that the Department void the permit. Upon the Department's verification that no site disturbance, including pre-construction earth movement, disturbance of any vegetation or construction has occurred on the Property, the Department shall void the permit and provide to the permittee, owner or grantor an executed release of the conservation restriction, which the permittee or grantor may then record.
4. Prior to commencement of any site disturbance, clearing, grading or construction, all necessary local, Federal, and other State approvals must be obtained by the permittee.
5. Consistent with direction from the United States Fish and Wildlife Service ("USFWS") in a two-way memorandum dated May 9, 2014, this permit is contingent on the following three conditions (ie. Pre-Construction Conditions nos. 4 to 6). The USFWS notes that the proposed project site is located within the summer migratory range of the federally listed Indiana bat (*Myotis sodalis*). Indiana bats are federally listed as endangered pursuant to the Endangered Species Act of 1973(87 Stat. 884; 16 U.S.C. 1531 *et seq.*). Due to the size and proximity of the project site to known occurrences of the Indiana bat, the applicant shall survey for summering Indiana bats in all suitable habitats in and adjacent to areas proposed for development. The survey shall be completed prior to any site disturbance or construction, and between May 15 and August 15. Surveys shall be conducted by a qualified, USFWS-approved biologist according to the enclosed survey guidelines. A survey work plan must be submitted and approved by the USFWS prior to the start of any survey. **No tree clearing shall occur before the survey has been completed and tree clearing has been authorized**

by USFWS. Even if breeding Indiana bats are not found during the summer months, it is probable the Property is used by foraging bats before and after hibernation, and by resident summering males. **Therefore, tree clearing, if approved by the USFWS, shall not occur between April 1 and September 30 anywhere on the Property.**

6. The USFWS has also proposed listing the northern long-eared bat (*Myotis septentrionalis*) as an endangered species throughout its range. The project area occurs within the summer migratory range of the northern long-eared bat and is in the vicinity of a maternity colony buffer. Therefore, any captures of the northern long-eared bat made during the Indiana bat survey, shall be reported according to the enclosed survey guidelines.
7. Prior to any site disturbance, a qualified botanist must conduct a vegetative survey of the entire project area to determine the absence or presence of small whorled pogonia (*Isotria medeoloides*). The results of any survey, regardless of presence or absence, must be forwarded to U.S. Fish & Wildlife Service, New Jersey Field Office, Attn: Carlo Popolizio, 927 N. Main Street, Bldg. D, Pleasantville, NJ 08232.
8. Prior to commencement of any site disturbance, clearing, grading or construction, the permittee shall have a silt fence erected at the limits of the four "Additional Conservation Areas," as well as the transition area **as modified herein**. These fences shall serve as both a siltation and debris barrier as well as a physical barrier protecting the wetland and modified transition area from encroachment by construction vehicles or activities. These fences shall be kept in place and maintained throughout the duration of construction, and until such time that the site is stabilized. No regulated activities, including grading or clearing may occur in the wetland or modified transition area on site without the prior approval of the Department.
9. **Timing:** If this permit contains a condition that must be satisfied prior to the commencement of construction, such as the recordation of a conservation restriction or surveys, the permittee must comply with such condition(s) within the time required by the permit or, if no time specific requirement is imposed, then within six months of the effective date of the permit, or provide evidence satisfactory to the Division that such condition(s) cannot be satisfied.
10. The archaeological consultant must submit a draft Phase I archaeological survey report to the New Jersey Historic Preservation Office ("HPO") for review and comment. The Phase I report will include recommendations regarding the need for Phase II National Register evaluation survey of any identified archaeological deposits.
11. No project ground disturbing activities shall commence on the project site until the permittee completes the archaeological program to identify, evaluate, avoid, and/or mitigate project impacts on archaeological resources.
12. If the HPO determines Phase II evaluation archaeological survey is necessary, the archaeological consultant shall provide the HPO with a Phase II work plan for review and approval prior to the commencement of the Phase II fieldwork.
13. If the HPO determines that Phase II archaeological survey did not identify archaeological deposits eligible for listing on the National Register of Historic Places, no additional consideration of project impacts on archaeological resources will be necessary.

14. If the draft Phase II evaluation survey report results in a determination by the HPO that any archaeological site(s) is eligible for inclusion on the National Register of Historic Places, the permittee must provide recommendations for avoidance of impacts to the HPO and DLUR within 30 days of notification of National Register eligibility. It will be determined through consultation with the HPO whether archaeological sites avoided by project impacts shall be preserved in place through a preservation easement.
15. If impacts cannot be avoided, the permittee must provide analyses to HPO which explore alternatives to minimize and/or mitigate impacts. Any minimization and/or mitigation plan(s) shall be approved by the HPO prior to implementation. A mitigation plan involving Phase III archaeological data recovery shall include an HPO approved research design, work plan, any archaeological site buffer zone(s) protecting resources during on-site construction activities, collection repository, and public outreach component. The mitigation and/or archaeological data recovery plan shall be submitted and approved by the HPO prior to the commencement of the data recovery fieldwork.
16. The permittee is responsible for ensuring that the HPO-approved archaeological work plans for the Phase II and Phase III data recovery surveys are implemented.
17. The permittee shall ensure that the HPO receives a copy of the data recovery management summary within three months of the completion of the data recovery fieldwork.
18. The permittee shall ensure that complete draft Phase I and Phase II reports are submitted to the HPO for review and approval within six months after respective phases of fieldwork are completed. The permittee shall ensure that a complete draft Phase III report be submitted to the HPO for review and approval within one year after fieldwork is completed. Final reports for each phase of survey shall be submitted to the HPO within two months after comments are received on the respective draft reports. Other timelines (for example, for public outreach) shall be established in consultation with the HPO, as necessary, based on the findings of the archaeological survey.
19. The permittee shall notify the HPO within three days of completing each phase of archaeological fieldwork.
20. The permittee shall ensure that all artifacts from State Register or National Register eligible archaeological sites will be analyzed, catalogued, and curated in accordance with the National Park Service Standards, codified as 36 CFR Part 79.
21. The permittee shall ensure that within two months of the submission of the final Phase II report and any final Phase III data recovery report to DLUR and the HPO, the artifacts, field records (including the artifact catalogue), and copies of all phases of survey from National Register eligible sites are turned over to an institution meeting the Secretary of the Interior's Standards for Curation. A copy of the Deed of Gift Form from a suitable curation facility shall be submitted to the Historic Preservation Office at that time, as an indicator of the final transmission of the artifact collection. All archaeological reports shall identify the repository where the project records and artifacts will be located.
22. The permittee shall ensure that the individual(s) conducting the work shall meet the Secretary of the Interior's Professional Qualifications Standards for archaeology (48 FR 44738-9).

23. The permittee shall ensure that all phases of the archaeological survey and reporting shall be in keeping with the Secretary of the Interior's *Standards and Guidelines for Archaeology and Historic Preservation* and the archaeological survey and report rules at N.J.A.C. 7:4-8.4 through 8.5. Evaluations to determine the National Register eligibility of archaeological sites should be in keeping with the National Park Service's 2000 National Register Bulletin, *Guidelines for Evaluating and Registering Archaeological Properties*. The *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation* are available on the National Park Services web site: http://www.nps.gov/history/local-law/arch_stnds_0.htm)
24. The permittee shall ensure that work that does not meet the Secretary of the Interior's *Standards and Guidelines for Archeology and Historic Preservation* and the requirements of the Freshwater Wetlands Protection Act Rules, as determined by the HPO in consultation with DLUR, will be rectified by the project archaeological consultant(s).
25. If potential human burials or human skeletal remains are encountered, all ground disturbing activities in the vicinity must cease immediately and the HPO must be contacted, as well as any appropriate legal officials. The potential burials must be left in place unless imminently threatened by human or natural displacement.
26. If, for any reason the Phase I, and any required Phase II evaluation and/or Phase III data recovery, fieldwork is not accomplished prior to construction within the defined project area site limits, the permittee shall be responsible for all investigation, evaluation, survey, salvage, and/or stabilization deemed necessary by the HPO, in consultation the DLUR, pursuant to the implementing regulations. Information gathered from such investigation, evaluation, or survey shall be used by the HPO, in consultation with DLUR, to determine the extent of damage, evaluate the resource, and direct any measures to mitigate impacts from project-related activities, including any actions on the part of the permittee's contractors. Should any archaeological site be entirely destroyed by project-related activities before completion of any of the required phases of archaeological fieldwork are completed, the HPO, in consultation with DLUR, shall determine other appropriate mitigation (e.g. alternative site excavation, alternative analysis, and/or public outreach activities) and enforcement, commensurate with the impacts which occurred.
27. A copy of these cultural resource conditions must be provided to the archaeological consultant(s) for the project.

SPECIAL CONDITIONS:

1. This permit authorizes the disturbance of 74,874 square feet (1.718 acres) of transition area for the construction of 14 houses and two detention basins under a Transition Area Waiver per N.J.A.C. 7:7A-6.1(d). In accordance with the approved November 13, 2009 Letter of Interpretation – Line Verification Re-Issuance, File No. 0000-03-0013.1, FWW 090001, the wetlands affected by this permit authorization are of Exceptional resource value and the standard transition area or buffer required adjacent to these wetlands is 150 feet. Any additional regulated activities conducted within the wetlands or standard transition areas shall be considered a violation of the Freshwater Wetlands Protection Act rules unless the

- regulated activity is authorized by this permit or a permit or modification is obtained from the Division of Land Use Regulation prior to the start of the disturbance.
2. The remaining, modified transition area and wetlands shall remain undisturbed and natural, and not be maintained as a mowed or landscaped area. These areas shall be allowed to revert to a natural habitat.
 3. Following construction, the permittee must install and maintain a split rail fence or equivalent along the limits of the modified transition area and the four "Additional Conservation Areas" to ensure that subsequent activities on site do not encroach into these deed restricted areas. Such a fence must be installed along the deed restricted areas adjacent to residential yards, detention basins, roadways, and other structures. In other areas, visual markers may be installed along the deed restricted boundary to delineate this boundary.
 4. Any additional un-permitted disturbance of freshwater wetlands, State open waters and/or transition areas besides that shown on the approved plans shall be a violation of the Freshwater Wetlands Protection Act Rules, unless the activity is exempt or a subsequent or modified permit for the Property is obtained from the Department prior to the start of the proposed disturbance.
 5. Any pipes laid through wetlands, transition areas, or State open water must be properly sealed so as to prevent leaking or infiltration. Pipes and backfilled materials must be placed entirely beneath the pre-existing ground elevation.
 6. The excavation within the wetlands and transition area must be backfilled with the original soil material or suitable material to within 18 inches of the surface. The upper 18 inches must be backfilled with the original topsoil material to the preexisting elevation and replanted with indigenous species.
 7. The applicant shall be responsible for ensuring that the back-filling activities do not interfere with the natural hydraulic characteristics of the wetland, such as flow characteristics of groundwater on the site.
 8. **Material Disposal:** All excavated material and dredge material shall be disposed of in a lawful manner. All such material shall be placed outside of any flood hazard area, riparian zone, regulated water, freshwater/coastal wetlands and adjacent transition area, and in such a way as to not interfere with the existing drainage of the receiving area.
 9. This permit authorization shall not be construed as a consistency determination for any sewage generating structures on the project site.
 10. This authorization for a General Permit is valid for a term not to exceed five years from the date of this letter. If the permittee wishes to continue an activity covered by the permit after the expiration date of the permit, the permittee must apply for and obtain a permit extension or a new permit, prior to the permit's expiration. If the term of the authorization exceeds the expiration date of the general permit issued by rule, and the permit upon which the authorization is based is modified by rule to include more stringent standards or conditions, or is not reissued, the applicant must comply with the requirements of the new regulations by applying for a new GP authorization or an Individual permit.

11. The plans approved herein are approved for construction purposes.

STANDARD CONDITIONS:

1. **Responsibilities:**
 - a. The permittee, its contractors and subcontractors shall comply with all conditions of this permit, authorizing and/or supporting documents and approved plans and drawings.
 - b. A copy of this permit, other authorizing documents, records and information including all approved plans and drawings shall be maintained at the authorized site at all times and made available to Department representatives or their designated agents upon request.
2. **Permit modification:** Plans and specifications in the application and conditions imposed by this permit shall remain in full force and effect so long as the proposed development or any portion thereof is in existence, unless modified by the Department. No change in plans or specifications upon which this permit is issued shall be made except with the prior written permission of the Department. The filing of a request to modify an issued permit by the permittee, or a notification of planned changes or anticipated noncompliance does not stay any condition of this permit.
3. **Duty to minimize environmental impacts:** The permittee shall take all reasonable steps to prevent, minimize or correct any adverse impact on the environment resulting from activities conducted pursuant to the permit, or from noncompliance with the permit. The permittee shall immediately inform the Department of any unanticipated adverse effects on the environment not described in the application or in the conditions of this permit. The Department may, upon discovery of such unanticipated adverse effects, and upon the failure of the permittee to submit a report thereon, notify the permittee of its intent to suspend the permit.
4. **Proper site maintenance:** While the regulated activities are being undertaken, neither the permittee, its contractors nor subcontractors shall cause or permit any unreasonable interference with the free flow of a regulated feature by placing or dumping any materials, equipment, debris or structures within or adjacent to the regulated area. Upon completion or abandonment of the work, the permittee, its contractors or subcontractors shall remove and dispose of in a lawful manner all excess materials, debris, equipment, silt fences and other temporary soil erosion and sediment control devices from all regulated areas. Only clean non-toxic fill shall be used where necessary.
5. **Sediment control:** Development which requires soil disturbance, creation of drainage structures, or changes in natural contours shall conduct operations in accordance with the latest revised version of "Standards for Soil Erosion Sediment Control in New Jersey," promulgated by the New Jersey State Soil Conservation Committee, pursuant to the Soil Erosion and Sediment Control Act of 1975, N.J.S.A. 4:24-42 et seq. and N.J.A.C. 2:90-1.3-1.14.
6. **Rights of the State:**
 - a. This permit does not convey any property rights of any sort, or any exclusive privilege.

- b. Upon 24 hour advance notice and presentation of credentials, the permittee shall allow Department representatives or their designated agents, to enter upon the Property and/or where records must be kept under the conditions of this permit, to inspect during business hours any facilities, equipment, practices or operations regulated or required under the permit, and sample or monitor for the purposes of determining compliance. Failure to allow such access shall be considered a violation of this permit and subject the permittee to enforcement action.
 - c. The issuance of this permit shall in no way expose the State of New Jersey or the Department to liability for the sufficiency or correctness of the design of any construction, structure or structures. Neither the State nor the Department shall, in any way, be liable for the loss of life or property which may occur by virtue of the activity of development resulting from any permit.
7. **Duty to Reapply:** If the permittee wishes to continue an activity covered by the permit after the expiration date of the permit authorization, the permittee must apply for and obtain a new permit authorization.
8. **Transfer of Permit:** This permit may not be transferred to any person without prior advance notice to the Department. Notice shall be given to the Director, Division of Land Use Regulation, New Jersey Department of Environmental Protection, P.O. Box 439, Trenton, New Jersey 08625-0439.
9. **Other Approvals:** The permittee must obtain any and all other Federal, State and/or Local approvals. Authorization to undertake a regulated activity under this permit does not indicate that the activity also meets the requirements of any other rule, plan or ordinance.
10. **Noncompliance:**
 - a. Any noncompliance with this permit constitutes a violation, and is grounds for enforcement action, as well as modification, suspension and/or termination of the permit.
 - b. The permittee shall immediately report to the Department by telephone at (877) 927-6337 any noncompliance that may endanger health or the environment. In addition, the permittee shall report all noncompliance to Bureau of Coastal and Land Use Compliance and Enforcement, 401 E. State Street, 4th Floor, P.O. Box 420, Mail Code: 401-04C, Trenton, NJ 08625, in writing within five business days of the time the permittee becomes aware of the noncompliance. The written notice shall include: a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated length of time it is expected to continue; and steps taken or planned to reduce, eliminate and prevent recurrence of the noncompliance. Such notice shall not, however, serve as a defense to enforcement action if the project is found to be in violation of this chapter.
11. **Appeal of Permit:** In accordance with the applicable regulations, any person who is aggrieved by this decision or any of the conditions of this permit may request a hearing within 30 days after notice of the decision is published in the DEP Bulletin. This request must include a completed copy of the Administrative Hearing Request Checklist. The DEP

Bulletin is available through the Department's website at <http://www.nj.gov/dep/bulletin> and the Checklist is available through the Division's website at http://www.nj.gov/dep/landuse/download/lur_024.pdf. In addition to your hearing request, you may file a request with the Office of Dispute Resolution to engage in alternative dispute resolution. Please see the website www.nj.gov/dep/odr for more information about this process.

APPROVED PLANS:

The plan hereby approved is one (1) sheet prepared by Maser Consulting P.A., dated May 18, 2012, last revised October 5, 2012, entitled:

“NJDEP Permitting Plan for Bi-County Oakland, Block 3001, Lots 1, 4, 15 and 18, Tax map Sheet #30, Borough of Oakland, Bergen County, New Jersey.”

If you need clarification on any section of this permit or conditions, please contact the Division of Land Use Regulation's Technical Support Call Center at (609) 777-0454.

Approved By:



Andrew Clark, Supervisor
Division of Land Use Regulation

Original sent to Agent to record

c: Permittee

Borough of Oakland
Township of Wayne
NJ Highlands Coalition c/o Elliott Ruga
NJ Sierra Club
USFWS c/o Carlo Popolizio
NJDEP Water Supply c/o Fred Sickels
NJDEP Watershed Management c/o Terri Pilawski
NJDEP Watershed Management c/o Nick Angarone
NJDEP SHPO c/o Daniel Saunders
NJDEP Compliance and Enforcement, Chester Office c/o Armand Perez