

## Slachta, Chris

---

**From:** Willis, Thomas C  
**Sent:** Monday, October 19, 2015 12:15 PM  
**To:** Slachta, Chris  
**Subject:** Fwd: NC 12 Kitty Hawk General Permit

Cama permit special conditions.  
Clay

Sent from my iPhone

Begin forwarded message:

**From:** "Daisey, Greg" <[Greg.Daisey@ncdenr.gov](mailto:Greg.Daisey@ncdenr.gov)>  
**Date:** October 19, 2015 at 11:28:37 AM EDT  
**To:** "Willis, Thomas C" <[tcwillis@ncdot.gov](mailto:tcwillis@ncdot.gov)>  
**Subject:** NC 12 Kitty Hawk General Permit

Clay –

Along with the 07H .1700 general conditions, the following notes/special conditions will also be included.

1. In accordance with commitments made by the permittee, the authorized temporary construction sheet pile structure shall be removed in its entirety either immediately upon project completion or upon receipt of a written removal notice from DCM.
2. Permittee shall coordinate with the US Army Corps of Engineers regarding the project and provide a USACE issued permit to DCM prior to beginning construction.
3. Permittee is allowed approximately 8,255 sq. ft. of fill below MHW.
4. Permittee shall be required to remove any debris (asphalt, concrete, etc.) from the existing failing roadway and/or uncovered within the project area prior to project completion.
5. A copy of this permit and approved drawings must be kept on-site during work.
6. NCDOT must maintain sandbags in good condition. Damaged and remnant fabric must be removed as they are uncovered.

Thank you for your time and please contact me at (252)264-3901 ext. 249 with any questions or if I can be of any more assistance.

### **Greg Daisey**

Transportation Projects Field Representative  
Division of Coastal Management  
North Carolina Department of Environmental Quality

252 264 3901, EXT. 249  
[Greg.Daisey@ncdenr.gov](mailto:Greg.Daisey@ncdenr.gov)

1367 US Hwy 17 South  
Elizabeth City, NC 27909

**SECTION .1700 - GENERAL PERMIT FOR EMERGENCY WORK REQUIRING A CAMA AND/OR A  
DREDGE AND FILL PERMIT**

**15A NCAC 07H .1701 PURPOSE**

This permit allows work necessary to protect property and/or prevent further damage to property caused by a sudden or unexpected natural event or structural failure which imminently endangers life or structure. For the purposes of this general permit, major storms such as hurricanes, northeasters or southwesters may be considered a sudden unexpected natural event although such storms may be predicted and publicized in advance.

*History Note: Authority G.S. 113-229(c); 113A-107(a),(b); 113A-113(b); 113A-118.1;  
Eff. November 1, 1985.*

**15A NCAC 07H .1702 APPROVAL PROCEDURES**

- (a) Any person wishing to undertake development in an area of environmental concern necessary to protect life or endangered structures will notify the Division of Coastal Management or Local Permit Office (LPO) when a possible emergency situation exists.
- (b) The applicant may qualify for approval of work described in this permit after an onsite inspection by the LPO or Division of Coastal Management Field Consultant and upon his findings that the proposed emergency work requires a CAMA and/or Dredge and Fill permit. The LPO shall issue the permit if the required emergency measures constitute minor development.
- (c) Once the LPO or Consultant determines that the applicant's proposed project may qualify for an emergency permit, he shall consult with the applicant and assist him in preparing an application. The applicant shall include a sketch showing existing conditions and the proposed work.
- (d) The applicant for an emergency permit must take all reasonable steps to notify adjacent riparian landowners of the application, and prior to receiving a permit will certify by signing the permit the following:
  - (1) that a copy of the application and sketch has been served on all adjacent riparian landowners, or if service of a copy was not feasible, that the applicant has explained the project to all adjacent riparian landowners;
  - (2) that the applicant has explained to all adjacent riparian landowners that they have a right to oppose the issuance of a permit by filing objections with the local CAMA permit officer or with the Secretary of the Department of Environment, Health, and Natural Resources;
  - (3) that, as to adjacent riparian landowners not contacted, the applicant has made a reasonable attempt to contact them and furnish them with the required information.
- (e) All work authorized by this general permit will cease after thirty days from the date of issuance.

*History Note: Authority G.S. 113-229(c); 113A-107(a),(b); 113A-113(b); 113A-118.1;  
Eff. November 1, 1985;  
Amended Eff. May 1, 1990.*

**15A NCAC 07H .1703 PERMIT FEE**

The agency shall not charge a fee for permitting work necessary to respond to emergency situations except in the case when a temporary erosion control structure is used. In those cases, the applicant shall pay a permit fee of four hundred dollars (\$400.00) by check or money order made payable to the Department.

*History Note: Authority G.S. 113-229(c); 113A-107(a),(b); 113A-113(b); 113A-118.1; 113A-119;  
Eff. November 1, 1985;  
Amended Eff. September 1, 2006; August 1, 2002; March 1, 1991; October 1, 199.*

**15A NCAC 07H .1704 GENERAL CONDITIONS**

- (a) Work permitted by means of an emergency general permit shall be subject to the following limitations:
  - (1) No work shall begin until an onsite meeting is held with the applicant and a Division of Coastal Management representative so that the proposed emergency work can be delineated. Written authorization to proceed with the proposed development may be issued during this visit.
  - (2) No work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency, to restore the damaged property to its condition immediately before the emergency, or to re-establish necessary public facilities or transportation corridors.
  - (3) Any permitted erosion control projects shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of way in the case of roads. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being

protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or designee.

(4) Fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source. Excavation below MHW in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.

(5) Structural work shall meet sound engineering practices.

(6) This permit allows the use of oceanfront erosion control measures for all oceanfront properties without regard to the size of the existing structure on the property or the date of construction.

(b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make inspections at any time deemed necessary to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions in these Rules.

(c) Development shall not jeopardize the use of the waters for navigation or for other public trust rights in public trust areas including estuarine waters.

(d) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality, air quality, coastal wetlands, cultural or historic sites, wildlife, fisheries resources, or public trust rights.

(e) This permit does not eliminate the need to obtain any other state, local, or federal authorization.

(f) Development carried out under this permit must be consistent with all local requirements, CAMA rules, and local land use plans, storm hazard mitigation, and post-disaster recovery plans current at the time of authorization.

*History Note: Authority G.S. 113-229(c); 113A-107(a),(b); 113A-113(b); 113A-118.1; Eff. November 1, 1985; Amended Eff. December 1, 1991; May 1, 1990; RRC Objection due to ambiguity Eff. May 19, 1994; Amended Eff. May 1, 2010; August 1, 1998; July 1, 1994.*

#### **15A NCAC 07H .1705 SPECIFIC CONDITIONS**

(a) Temporary Erosion Control Structures in the Ocean Hazard AEC.

(1) Permittable temporary erosion control structures shall be limited to sandbags placed landward of mean high water and parallel to the shore.

(2) Temporary erosion control structures as defined in Subparagraph (1) of this Paragraph shall be used to protect only imminently threatened roads and associated right of ways, and buildings and their associated septic systems. A structure shall be considered imminently threatened if its foundation, septic system, or, right-of-way in the case of roads, is less than 20 feet away from the erosion scarp. Buildings and roads located more than 20 feet from the erosion scarp or in areas where there is no obvious erosion scarp may also be found to be imminently threatened when site conditions, such as a flat beach profile or accelerated erosion, increase the risk of imminent damage to the structure.

(3) Temporary erosion control structures shall be used to protect only the principal structure and its associated septic system, but not appurtenances such as pools, gazebos, decks or any amenity that is allowed as an exception to the erosion setback requirement.

(4) Temporary erosion control structures may be placed seaward of a septic system when there is no alternative to relocate it on the same or adjoining lot so that it is landward of or in line with the structure being protected.

(5) Temporary erosion control structures shall not extend more than 20 feet past the sides of the structure to be protected. The landward side of such temporary erosion control structures shall not be located more than 20 feet seaward of the structure to be protected or the right-of-way in the case of roads. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat beach profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal management or designee.

(6) Temporary erosion control structures may remain in place for up to two years after the date of approval if they are protecting a building with a total floor area of 5000 square feet or less and its associated septic system, or for up to five years for a building with a total floor area of more than 5000 square feet and its associated septic system. Temporary erosion control structures may remain in place for up to five years if they are protecting a bridge or a road. The property owner shall be responsible for removal of the temporary structure within 30 days of the end of the allowable time period.

(7) Temporary sandbag erosion control structures may remain in place for up to five years from the date of approval if they are located in a community that is actively pursuing a beach nourishment project, and up to eight years from the date of approval if they are located in an Inlet Hazard Area adjacent to an inlet for which a community is actively pursuing an inlet relocation project. For purposes of this Rule, a community is considered to be actively pursuing a beach nourishment or inlet relocation project if it has:

(A) an active CAMA permit, where necessary, approving such project, or

- (B) been identified by a U.S. Army Corps of Engineers' Beach Nourishment Reconnaissance Study, General Reevaluation Report, Coastal Storm Damage Reduction Study, or an ongoing feasibility study by the U.S. Army Corps of Engineers and a commitment of local or federal money, when necessary; or
- (C) received a favorable economic evaluation report on a federal project; or
- (D) is in the planning stages of a project that has been designed by the U.S. Army Corps of Engineers or persons meeting applicable State occupational licensing requirements and has been initiated by a local government or community with a commitment of local or state funds to construct the project and the identification of the financial resources or funding bases necessary to fund the beach nourishment or inlet relocation project.

If beach nourishment or inlet relocation is rejected by the sponsoring agency or community, or ceases to be actively planned for a section of shoreline, the time extension is void for that section of beach or community and existing sandbags are subject to all applicable time limits set forth in Subparagraph (6) of this Paragraph.

(8) Once the temporary erosion control structure is determined to be unnecessary due to relocation or removal of the threatened structure, a storm protection project constructed by the U.S. Army Corps of Engineers, a large scale beach nourishment project or an inlet relocation project, it shall be removed by the permittee within 30 days of official notification by the Division of Coastal Management regardless of the time limit placed on the temporary erosion control structure.

(9) Removal of temporary erosion control structures shall not be required if they are covered by dunes with stable and natural vegetation.

(10) The property owner shall be responsible for the removal of remnants of all portions of any damaged temporary erosion control structure.

(11) Sandbags used to construct temporary erosion control structures shall be tan in color and 3 to 5 feet wide and 7 to 15 feet long when measured flat. Base width of the structure shall not exceed 20 feet, and the height shall not exceed 6 feet.

(12) Soldier pilings and other types of devices to anchor sandbags shall not be allowed.

(13) Excavation below mean high water in the Ocean Hazard AEC may be allowed to obtain material to fill sandbags used for emergency protection.

(14) An imminently threatened structure may be protected only once regardless of ownership unless the threatened structure is located in an Inlet Hazard Area and in a community that is actively pursuing an inlet relocation project in accordance with Subparagraph (7). Existing temporary erosion control structures located in Inlet Hazard Areas may be eligible for an additional eight year permit extension provided that the structure being protected is still imminently threatened, the temporary erosion control structure is in compliance with requirements of this Subparagraph and the community in which it is located is actively pursuing an inlet relocation project in accordance with Subparagraph (7) of this Paragraph. In the case of a building, a temporary erosion control structure may be extended, or new segments constructed, if additional areas of the building become imminently threatened. Where temporary structures are installed or extended incrementally, the time period for removal under Subparagraph (6) or (7) shall begin at the time the initial erosion control structure is installed. For the purpose of this Rule:

- (A) a building and septic system shall be considered as separate structures.

- (B) a road or highway shall be allowed to be incrementally protected as sections become imminently threatened. The time period for removal of each section of sandbags shall begin at the time that section is installed in accordance with Subparagraph (6) or (7) of this Rule.

(15) Existing sandbag structures may be repaired or replaced within their originally permitted dimensions during the time period allowed under Subparagraph (6) or (7) of this Rule.

(b) Erosion Control Structures in the Estuarine Shoreline, Estuarine Waters, and Public Trust AECs. Work permitted by this general permit shall be subject to the following limitations:

- (1) no work shall be permitted other than that which is necessary to reasonably protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;

- (2) the erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure. If a building or road is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the structure being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or designee.

- (3) fill material used in conjunction with emergency work for storm or erosion control in the Estuarine Shoreline, Estuarine Waters and Public Trust AECs shall be obtained from an upland source.

(c) Protection, Rehabilitation, or Temporary Relocation of Public Facilities or Transportation Corridors.

- (1) Work permitted by this general permit shall be subject to the following limitations:

- (A) no work shall be permitted other than that which is necessary to protect against or reduce the imminent danger caused by the emergency or to restore the damaged property to its condition immediately before the emergency;

- (B) the erosion control structure shall be located no more than 20 feet waterward of the imminently threatened structure or the right-of-way in the case of roads. If a public facility or transportation corridor is found to be imminently threatened and at increased risk of imminent damage due to site conditions such as a flat shore profile or accelerated erosion, temporary erosion control structures may be located more than 20 feet seaward of the facility or corridor being protected. In cases of increased risk of imminent damage, the location of the temporary erosion control structures shall be determined by the Director of the Division of Coastal Management or designee;
- (C) any fill materials used in conjunction with emergency work for storm or erosion control shall be obtained from an upland source except that dredging for fill material to protect public facilities or transportation corridors shall be considered in accordance with standards in 15A NCAC 7H .0208;
- (D) all fill materials or structures associated with temporary relocations which are located within Coastal Wetlands, Estuarine Water, or Public Trust AECs shall be removed after the emergency event has ended and the area restored to pre-disturbed conditions.

(2) This permit authorizes only the immediate protection or temporary rehabilitation or relocation of existing public facilities. Long-term stabilization or relocation of public facilities shall be consistent with local governments' post-disaster recovery plans and policies which are part of their Land Use Plans.

*History Note: Authority G.S. 113-229(c1); 113A-107(a),(b); 113A-113(b); 113A-118.1;  
Eff. November 1, 1985;  
Amended Eff. April 1, 1999; February 1, 1996; June 1, 1995;  
Temporary Amendment Eff. July 3, 2000; May 22, 2000;  
Amended Eff. May 1, 2010; August 1, 2002. Temporary Amendment Eff. July 3, 2000; May 22, 2000;*

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

Action Id. SAW-2015-01119 County: Dare U.S.G.S. Quad: NC-KITTY HAWK

**GENERAL PERMIT (REGIONAL AND NATIONWIDE) VERIFICATION**

Permittee: NCDOT, Division Engineer  
Jerry Jennings  
Address: 113 Airport Road, Suite 100  
Edenton, NC, 27932

Telephone Number:

Size (acres)

1.0 acres

Nearest Town Kitty Hawk

Nearest Waterway

Atlantic Ocean

River Basin Albemarle

USGS HUC

03010205

Coordinates Latitude: 36.0675609038274

Longitude: -75.6907213649446

Location description: The project area is a 1.0 acre area adjacent to NC 12 near NCSR 1260 within the NCDOT Right of Way, across from the Black Pelican Restaurant in Kitty Hawk, Dare County, North Carolina.

Description of projects area and activity: NCDOT proposes to place 600 linear feet of sand bags and to reconstruct sand dunes on an 1,100 foot section of NC 12 near the intersection with NCSR 1260 in Kitty Hawk, North Carolina. On October 2, 2015 storm surge eroded the northbound lane and existing dunes in the project area. NCDOT proposes to place the sand bags parallel to the roadway above the mean high water line. However, because of the increased erosion in the area and in order to cover the bags and create a protective dune, approximately 0.18 acres of open water will be filled below the mhw. In order to facilitate the placement of the sandbags NCDOT will install a sheet pile wall that will be removed, in its entirety upon completion of the installation. NCDOT proposes to fill the sand bags with material removed from the swash zone within the project area. Construction of the project will result in the excavation of 2,083 cubic yards of material.

Applicable Law:  Section 404 (Clean Water Act, 33 USC 1344)  
 Section 10 (Rivers and Harbors Act, 33 USC 403)

Authorization: Regional General Permit Number or Nationwide Permit Number: GP 19800048 Emergency Activities on Ocean Beaches

***SEE ATTACHED RGP GENERAL, REGIONAL AND SPECIAL CONDITIONS***

**Your work is authorized by the above referenced permit provided it is accomplished in strict accordance with the attached conditions and your submitted application and attached information dated 10/16/2015. Any violation of the attached conditions or deviation from your submitted plans may subject the permittee to a stop work order, a restoration order, a Class I administrative penalty, 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 919-807-6300) 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 in Elizabeth City, NC, at (252) 264-3901.

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 Tracey Wheeler at 910-251-4627 or Tracey.L.Wheeler@usace.army.mil.

Corps Regulatory Official: \_\_\_\_\_ Date: 10/19/2015

Expiration Date of Verification: 12/31/2016

## 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 . Action ID: SAW- .

**Basis For Determination: All permitted work will occur below the mhw1 of the Atlantic Ocean.**

### E. Attention USDA Program Participants

This delineation/determination has been conducted to identify the limits of Corps' Clean Water Act jurisdiction for the particular site identified in this request. The delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are USDA Program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service, prior to starting work.

### F. Appeals Information (This information applies only to approved jurisdictional determinations as indicated in B and C 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:

US Army Corps of Engineers  
South Atlantic Division  
Attn: Jason Steele, Review Officer  
60 Forsyth Street SW, Room 10M15  
Atlanta, Georgia 30303-8801  
Phone: (404) 562-5137

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 by .

\*\*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: \_\_\_\_\_  
**Tracey Wheeler**

Date of JD: **10/19/2015**  
Expiration Date of JD: **10/19/2020**

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 our customer Satisfaction Survey online at <http://regulatory.usacesurvey.com/>.

## **SPECIAL CONDITIONS**

1. Temporary sheet pile must be removed in its entirety upon completion of sand bag placement.
2. No fill material is authorized below MHWL, except what is shown on plats for dune construction.
3. Sand for dune construction must be beach compatible and come from an upland source.



Action ID Number: SAW-2015-01119

County: Dare

Permittee: NCDOT, Division Engineer  
Jerry Jennings

Project Name: NCDOT/NC 12 Kitty Hawk/Emergency Sand Bags

Date Verification Issued: 10/19/2015

Project Manager: Tracey Wheeler

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:

US ARMY CORPS OF ENGINEERS  
WILMINGTON DISTRICT  
Attn: Tracey Wheeler  
2407 West 5<sup>th</sup> Street  
Washington, North Carolina 27889

Please note that your permitted activity is subject to a compliance inspection by a U. S. Army Corps of Engineers representative. Failure to comply with any terms or conditions of this authorization may result in the Corps suspending, modifying or revoking the authorization and/or issuing a Class I administrative penalty, or initiating other appropriate legal action.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and condition of the said permit, and required mitigation was completed in accordance with the permit conditions.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND  
REQUEST FOR APPEAL**

Applicant: **NCDOT, Division Engineer  
Jerry Jennings**

File Number: **SAW-2015-01119**

Date: **10/19/2015**

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 type="checkbox"/> APPROVED JURISDICTIONAL DETERMINATION	D
<input checked="" 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 or <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits.aspx> or the 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 district 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 or 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:

**District Engineer, Washington Regulatory Field Office,  
Attn: Tracey Wheeler  
2407 West 5<sup>th</sup> Street  
Washington, North Carolina 27889**

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

**Mr. Jason Steele, Administrative Appeal Review Officer  
CESAD-PDO  
U.S. Army Corps of Engineers, South Atlantic Division  
60 Forsyth Street, Room 10M15  
Atlanta, Georgia 30303-8801  
Phone: (404) 562-5137**

**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.

Date:

Telephone number:

\_\_\_\_\_  
Signature of appellant or agent.

*For appeals on Initial Proffered Permits send this form to:*

**District Engineer, Washington Regulatory Field Office, Attn: Tracey Wheeler, 2407 West 5<sup>th</sup> Street, Washington, North Carolina 27889**

*For Permit denials, Proffered Permits and approved Jurisdictional Determinations send this form to:*

**Division Engineer, Commander, U.S. Army Engineer Division, South Atlantic, Attn: Mr. Jason Steele, Administrative Appeal Officer, CESAD-PDO, 60 Forsyth Street, Room 10M15, Atlanta, Georgia 30303-8801  
Phone: (404) 562-5137**

DEPARTMENT OF THE ARMY  
Wilmington District, Corps of Engineers  
69 Darlington Avenue  
Wilmington, North Carolina 28403-1343  
<http://www.saw.usace.army.mil/WETLANDS/index.html>

**General Permit No.** 198000048  
**Name of Permittee:** General Public  
**Effective Date:** January 1, 2011  
**Expiration Date:** December 31, 2016

**DEPARTMENT OF THE ARMY  
GENERAL (REGIONAL) PERMIT**

A general permit to perform work in or affecting navigable waters of the United States and waters of the United States, upon recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 U.S.C. 403), and Section 404 of the Clean Water Act (33 U.S.C. 1344), is hereby modified and renewed by authority of the Secretary of the Army by

District Commander  
U.S. Army Engineer District, Wilmington  
Corps of Engineers  
69 Darlington Avenue  
Wilmington, North Carolina 28403-1343

**TO AUTHORIZE EMERGENCY CONSTRUCTION OF PRIMARY DUNES AND ANY ASSOCIATED EXCAVATION WATERWARD OF THE MEAN HIGH WATER (MHW) ELEVATION CONTOUR ON ATLANTIC OCEAN SHORELINES WITHIN NORTH CAROLINA, AND TO AUTHORIZE THE EMERGENCY PLACEMENT OF SANDBAGS AND ANY ASSOCIATED EXCAVATION NECESSARY TO FILL SANDBAGS WATERWARD OF THE MEAN HIGH WATER (MHW) ELEVATION CONTOUR ON ATLANTIC OCEAN SHORELINES WITHIN NORTH CAROLINA.**

**Special Conditions**

- a. Before initiating work under the authority of this general permit, the permittee must obtain written approval from the North Carolina Division of Coastal Management (NCDQM) and forward this approval to the Corps of Engineers, Wilmington District, Regulatory Division.
- b. Work authorized by this general permit is limited to the reconstruction of primary dunes and the placement of sandbags determined to be absolutely necessary to rectify an emergency situation as defined by North Carolina Coastal Resources Commission Regulations. The NCDQM in coordination with the Corps of Engineers, Wilmington District, Regulatory

Division, will make the decision whether an emergency exists. All work must comply with the North Carolina Guidelines for Areas of Environmental Concern in Ocean Hazard Areas.

c. This general permit does not necessarily authorize restoration of the property to its condition prior to the emergency. The Corps or the NCDCEM may limit the scope of work to that necessary to stabilize the beach to prevent property damage, injury or loss of life. Neither the U.S. Government nor the State of North Carolina will be held liable should the authorized work not fulfill its intended purpose.

d. All activities authorized by this general permit must be performed in strict accordance with the Special and General Conditions of this general permit, any specific instructions from the State or the Corps and any other state or federal requirements including North Carolina General Statutes 113-229, 143-215.3(a)(1), 143-215.3(c) and 113A-118.

e. This general permit does not authorize the excavation or filling of wetlands subject to Clean Water Act regulation.

f. Primary dunes will be reconstructed at or landward of existing or recently eroded primary dunes and/or adjacent primary dunes.

g. Between April 1 and November 15 of any year, no work will be authorized by this general permit until the permittee notifies the Corps and the Corps, after appropriate coordination with USFWS and/or NCWRC makes a case specific determination that the work is not likely to adversely affect threatened or endangered species or their critical habitat. The Corps may require a permittee to comply with specific conditions to ensure that authorized work does not adversely affect threatened or endangered species or their critical habitat.

### **General Conditions**

a. Except as authorized by this general permit or any USACE approved modification to this general permit, no excavation, fill or mechanized land-clearing activities shall take place within waters or wetlands, at any time in the construction or maintenance of this project. This permit does not authorize temporary placement or double handling of excavated or fill material within waters or wetlands outside the permitted area. This prohibition applies to all borrow and fill activities connected with this project.

b. Authorization under this general permit does not obviate the need to obtain other federal, state, or local authorizations.

c. All work authorized by this general permit must comply with the terms and conditions of the applicable Clean Water Act Section 401 Water Quality Certification for this general permit issued by the North Carolina Division of Water Quality.

d. The permittee shall employ all sedimentation and erosion control measures necessary to prevent an increase in sedimentation or turbidity within waters and wetlands outside the permit area. This shall include, but is not limited to, the immediate installation of silt fencing or similar appropriate devices around all areas subject to soil disturbance or the movement of earthen fill, and the immediate stabilization of all disturbed areas. Additionally, the project must remain in full compliance with all aspects of the Sedimentation Pollution Control Act of 1973 (North Carolina General Statutes Chapter 113A Article 4).

e. The activities authorized by this general permit must not interfere with the public's right to free navigation on all navigable waters of the United States. No attempt will be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work for a reason other than safety.

f. 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.

g. The permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the work will, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the affected water of the United States to its former conditions.

h. The permittee will allow the Wilmington District Engineer or his representative to inspect the authorized activity at any time deemed necessary to assure that the activity is being performed or maintained in strict accordance with the Special and General Conditions of this permit.

i. This general permit does not grant any property rights or exclusive privileges.

j. This permit does not authorize any injury to the property or rights of others.

k. This general permit does not authorize the interference with any existing or proposed federal project.

l. In issuing this permit, the Federal Government does not assume any liability for the following:

(1) Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

(2) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

(3) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

(4) Design or construction deficiencies associated with the permitted work

(5) Damage claims associated with any future modification, suspension, or revocation of this permit.

m. Authorization provided by this general permit may be modified, suspended or revoked in whole or in part if the Wilmington District Engineer, acting for the Secretary of the Army, determines that such action would be in the best public interest. The term of this general permit shall be five (5) years unless subject to modification, suspension or revocation. Any modification, suspension or revocation of this authorization will not be the basis for any claim for damages against the United States Government.

n. This general permit does not authorize any activity that the District Engineer determines, after any necessary investigations, would adversely affect:

(1) Rivers named in Section 3 of the Wild and Scenic Rivers Act (15 U.S.C. 1273), those proposed for inclusion as provided by Sections 4 and 5 of the Act and wild, scenic and recreational rivers established by state and local entities.

(2) Historic, cultural or archeological sites listed in or eligible for inclusion in the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 and its codified regulations, the National Historic Preservation Amendment Acts of 1980 and 1992, the Abandoned Shipwreck Act of 1987 and the Native American Graves Protection and Repatriation Act.

(3) Sites included in or determined eligible for listing in the National Registry of Natural Landmarks.

o. This general permit does not authorize any activity which will adversely affect any threatened or endangered species or a species proposed for such designation, or their designated critical habitat as identified under the Federal Endangered Species Act (16 U.S.C. 1531). Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the Corps field offices or at the following internet address: <http://www.ncnhp.org/Pages/heritagedata.html>. or <http://nc-es.fws.gov/es/es.html>. Permittees should notify the Corps if any listed species or designated critical habitat might be affected by the proposed project and may not begin work until notified by the Corps that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.


p. Permittees are advised that development activities in or near a floodway may be subject to the National Flood Insurance Program that prohibits any development, including fill, within a floodway that results in any increase in base flood elevations. This general permit does not authorize any activity prohibited by the National Flood Insurance Program.

q. The permittee must install and maintain, at his expense, any signal lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, on authorized facilities. For further information, the permittee should contact the U.S. Coast Guard Marine Safety Office at (910) 772-2191.

r. At his sole discretion, any time during the processing cycle, the Wilmington District Engineer may determine that this general permit will not be applicable to a specific proposal. In such case, the procedures for processing an individual permit in accordance with 33 CFR 325 will be available.

s. Activities which have commenced (i.e., are under construction) or are under contract to commence in reliance upon an RGP will remain authorized provided the activity is completed within twelve months of the date of an RGP's expiration, modification, or revocation. Activities completed under the authorization of an RGP which was in effect at the time the activity was completed continue to be authorized by that RGP.

**BY AUTHORITY OF THE SECRETARY OF THE ARMY:**

  
Jefferson M. Kyscavage  
Colonel, U.S. Army  
District Commander



# Water Quality Certification No. 3908

## **GENERAL CERTIFICATION FOR PROJECTS ELIGIBLE FOR U.S. ARMY CORPS OF ENGINEERS REGIONAL GENERAL PERMIT 198000048 INVOLVING DISPOSAL OF DREDGED MATERIAL ON OCEAN BEACHES WITHIN NORTH CAROLINA**

Water Quality Certification Number 3908 is issued in conformity with the requirements of Section 401, Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Division of Water Quality Regulations in 15 NCAC 02H .0500 and 15 NCAC 02B .0200 for the discharge of fill material to waters and wetland areas which are waters of the United States as described in the Wilmington District's Regional (General) Permit Number 198000048.

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

**Activities meeting any one (1) of the following thresholds or circumstances require written approval for a 401 Water Quality Certification from the Division of Water Quality (the "Division"):**

- a) Any proposed fill, dredging, excavation or other modification of waters or wetlands; or
- b) Any stream relocation; or
- c) Any impact associated with a Notice of Violation or an enforcement action for violation(s) of DWQ Wetland Rules (15A NCAC 02H .0500), Isolated Wetland Rules (15A NCAC 02H .1300), DWQ Surface Water or Wetland Standards, or Riparian Buffer Rules (15A NCAC 02B .0200); or
- d) Any impacts to streams and/or buffers in the Neuse, Tar-Pamlico, or Catawba River Basins or in the Randleman, Jordan or Goose Creek Watersheds (or any other basin or watershed with Riparian Area Protection Rules [Buffer Rules] in effect at the time of application) *unless* the activities are listed as "EXEMPT" from these rules or a Buffer Authorization Certificate is issued through N.C. Division of Coastal Management (DCM) delegation for "ALLOWABLE" activities.

In accordance with North Carolina General Statute 143-215.3D(e), written approval for a 401 Water Quality General Certification must include the appropriate fee. If a project also requires a CAMA Permit, then one payment to both agencies shall be submitted and will be the higher of the two fees.

**Activities included in this General Certification that do not meet one of the thresholds listed above do not require written approval from the Division as long as they comply with the Conditions of Certification listed below. If any of these Conditions cannot be met, then written approval from the Division is required.**

Conditions of Certification:

1. No Impacts Beyond those Authorized in the Written Approval or Beyond the Threshold of Use of this Certification

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 Pre-Construction Notification, as authorized in the written approval from the Division or beyond the thresholds established for use of this Certification without written authorization, including incidental impacts. All construction activities, including the design, installation, operation, and maintenance of sediment and erosion control Best Management Practices shall be performed so that no violations of state water quality standards, statutes, or rules occur. Approved plans and specifications for this project are incorporated by reference and are enforceable parts of this permit.

# Water Quality Certification No. 3908

## 2. Standard Erosion and Sediment Control Practices

Erosion and sediment control practices must be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices and if applicable, comply with the specific conditions and requirements of the NPDES Construction Stormwater Permit issued to the site:

- a. Design, installation, operation, and maintenance of the sediment and erosion control measures must be such that they equal or exceed the requirements specified in the most recent version of the *North Carolina Sediment and Erosion Control Manual*. The devices shall be maintained on all construction sites, borrow sites, and waste pile (spoil) projects, including contractor-owned or leased borrow pits associated with the project.
- b. For borrow pit sites, the erosion and sediment control measures must be designed, installed, operated, and maintained in accordance with the most recent version of the *North Carolina Surface Mining Manual*.
- c. Reclamation measures and implementation must comply with the reclamation in accordance with the requirements of the Sedimentation Pollution Control Act and the Mining Act of 1971.
- d. Sufficient materials required for stabilization and/or repair of erosion control measures and stormwater routing and treatment shall be on site at all times.
- e. If the project occurs in waters or watersheds classified as Primary Nursery Areas (PNAs), SA, WS-I, WS-II, High Quality (HQW), or Outstanding Resource (ORW) waters, then the sedimentation and erosion control designs must comply with the requirements set forth in 15A NCAC 04B .0124, *Design Standards in Sensitive Watersheds*.

## 3. No Sediment and Erosion Control Measures in Wetlands or Waters

Sediment and erosion control measures shall not be placed in wetlands or waters. Exceptions to this condition require application submittal to and written approval by the Division. If placement of sediment and erosion control devices in wetlands and waters is unavoidable, then design and placement of temporary erosion control measures shall not be conducted in a manner that may result in dis-equilibrium of wetlands, stream beds, or banks, adjacent to or upstream and downstream of the above structures. All sediment and erosion control devices shall be removed and the natural grade restored within two (2) months of the date that the Division of Land Resources (DLR) or locally delegated program has released the specific area within the project.

## 4. Construction Stormwater Permit NCG010000

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

The North Carolina Department of Transportation (NCDOT) shall be required to be in full compliance with the conditions related to construction activities within the most recent version of their individual NPDES (NCS000250) stormwater permit.

# Water Quality Certification No. 3908

5. The discharge shall not contain levels of toxic pollutants that would result in a violation of state water quality and wetland standards.
6. If concrete is used during the construction, then all necessary measures shall be taken to prevent direct contact between uncured or curing concrete and waters of the state. Water that inadvertently contacts uncured concrete shall not be discharged to waters of the state due to the potential for elevated pH and possible aquatic life/ fish kills.

7. Construction Moratoriums and Coordination

If activities must occur during periods of high biological activity (i.e. sea turtle nesting, fish spawning, or bird nesting), then biological monitoring may be required at the request of other state or federal agencies and coordinated with these activities.

All moratoriums on construction activities established by the NC Wildlife Resources Commission (WRC), US Fish and Wildlife Service (USFWS), NC Division of Marine Fisheries (DMF), or National Marine Fisheries Service (NMFS) to lessen impacts on trout, anadromous fish, larval/post-larval fishes and crustaceans, or other aquatic species of concern shall be implemented. Exceptions to this condition require written approval by the resource agency responsible for the given moratorium.

Work within the twenty-five (25) designated trout counties or identified state or federal endangered or threatened species habitat shall be coordinated with the appropriate WRC, USFWS, NMFS, and/or DMF personnel.

8. If an environmental document is required under the National or State Environmental Policy Act (NEPA or SEPA), then this General Certification is not valid until a Finding of No Significant Impact (FONSI) or Record of Decision (ROD) is issued by the State Clearinghouse.
9. In the twenty (20) coastal counties, the appropriate DWQ Regional Office must be contacted to determine if Coastal Stormwater Regulations will be required.
10. This General Certification does not relieve the applicant of the responsibility to obtain all other required Federal, State, or Local approvals.
11. The applicant/permittee and their authorized agents shall conduct all activities in a manner consistent with State water quality standards (including any requirements resulting from compliance with §303(d) of the Clean Water Act), and any other appropriate requirements of State and Federal Law. If the Division determines that such standards or laws are not being met, including 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, then the Division may reevaluate and modify this General Water Quality Certification.
12. When written authorization is required for use of this certification, upon completion of all permitted impacts included within the approval and any subsequent modifications, the applicant shall be required to return the certificate of completion attached to the approval. One copy of the certificate shall be sent to the DWQ Central Office in Raleigh at 1650 Mail Service Center, Raleigh, NC, 27699-1650.
13. Additional site-specific conditions, including monitoring and/or modeling requirements, may be added to the written approval letter for projects proposed under this Water Quality Certification in order to ensure compliance with all applicable water quality and effluent standards.

# Water Quality Certification No. 3908

14. This certification grants permission to the director, an authorized representative of the Director, or DENR staff, upon the presentation of proper credentials, to enter the property during normal business hours.

This General Certification shall expire on the same day as the expiration date of the corresponding Nationwide and/or Regional General Permit. The conditions in effect on the date of issuance of Certification for a specific project shall remain in effect for the life of the project, regardless of the expiration date of this Certification.

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

The Director of the North Carolina Division of Water Quality may require submission of a formal application for Individual Certification for any project in this category of activity if it is determined that the project is likely to have a significant adverse effect upon water quality, including state or federally listed endangered or threatened aquatic species, or degrade the waters so that existing uses of the wetland or downstream waters are precluded.

Public hearings may be held for specific applications or group of applications prior to a Certification decision if deemed in the public's best interest by the Director of the North Carolina Division of Water Quality.

Effective date: March 19, 2012

DIVISION OF WATER QUALITY

By



Charles Wakild, P.E.

Director

*History Note: Water Quality Certification (WQC) Number 3908 issued March 19, 2012 replaces WQC 3703 issued November 1, 2007; WQC 3640 issued March 2007; WQC 3493 issued December 2004; and WQC 3372 issued March 18, 2002. This General Certification is rescinded when the Corps of Engineers reauthorizes any of the corresponding Nationwide and/or Regional General Permits or when deemed appropriate by the Director of the Division of Water Quality.*