



STATE OF NORTH CAROLINA  
DEPARTMENT OF TRANSPORTATION

MICHAEL F. EASLEY  
GOVERNOR

LYNDO TIPPETT  
SECRETARY

September 12, 2002

MEMORANDUM TO: Mr. D. R. Conner, P.E.  
Division One Engineer

FROM: *for* V. Charles Bruton, Ph.D., Manager  
Office of the Natural Environment *Cindy Roebuck*  
Project Development and  
Environmental Analysis Branch

SUBJECT: Chowan County, Bridge No. 04 on SR 1207 over Rocky Hock  
Creek; State Project Number 8.2030201; T.I.P. # B-3435

Attached are the U. S. Army Corps of Engineers 404 Nationwide Permit Number 14, the Division of Water Quality 401 Water Quality Certification, and the CAMA Major permit for the above referenced project. All environmental permits have been received for the construction of this project.

VCB/eah

Attachment

cc: Ms. Debbie Barbour, P.E.  
Mr. Jay Bennett, P.E.  
Mr. David Chang, P.E.  
Mr. Randy Garris, P.E.  
Mr. Greg Perfetti, P.E.  
Mr. Don Lee  
Mr. Omar Sultan  
Mr. N. L. Graf, FHWA  
Mr. Clay Willis, Division 1 DEO

MAILING ADDRESS:  
NC DEPARTMENT OF TRANSPORTATION  
PROJECT DEVELOPMENT AND ENVIRONMENTAL ANALYSIS  
1548 MAIL SERVICE CENTER  
RALEIGH NC 27699-1548

TELEPHONE: 919-733-3141  
FAX: 919-733-9794

WEBSITE: [WWW.NCDOT.ORG](http://WWW.NCDOT.ORG)

LOCATION:  
TRANSPORTATION BUILDING  
1 SOUTH WILMINGTON STREET  
RALEIGH NC

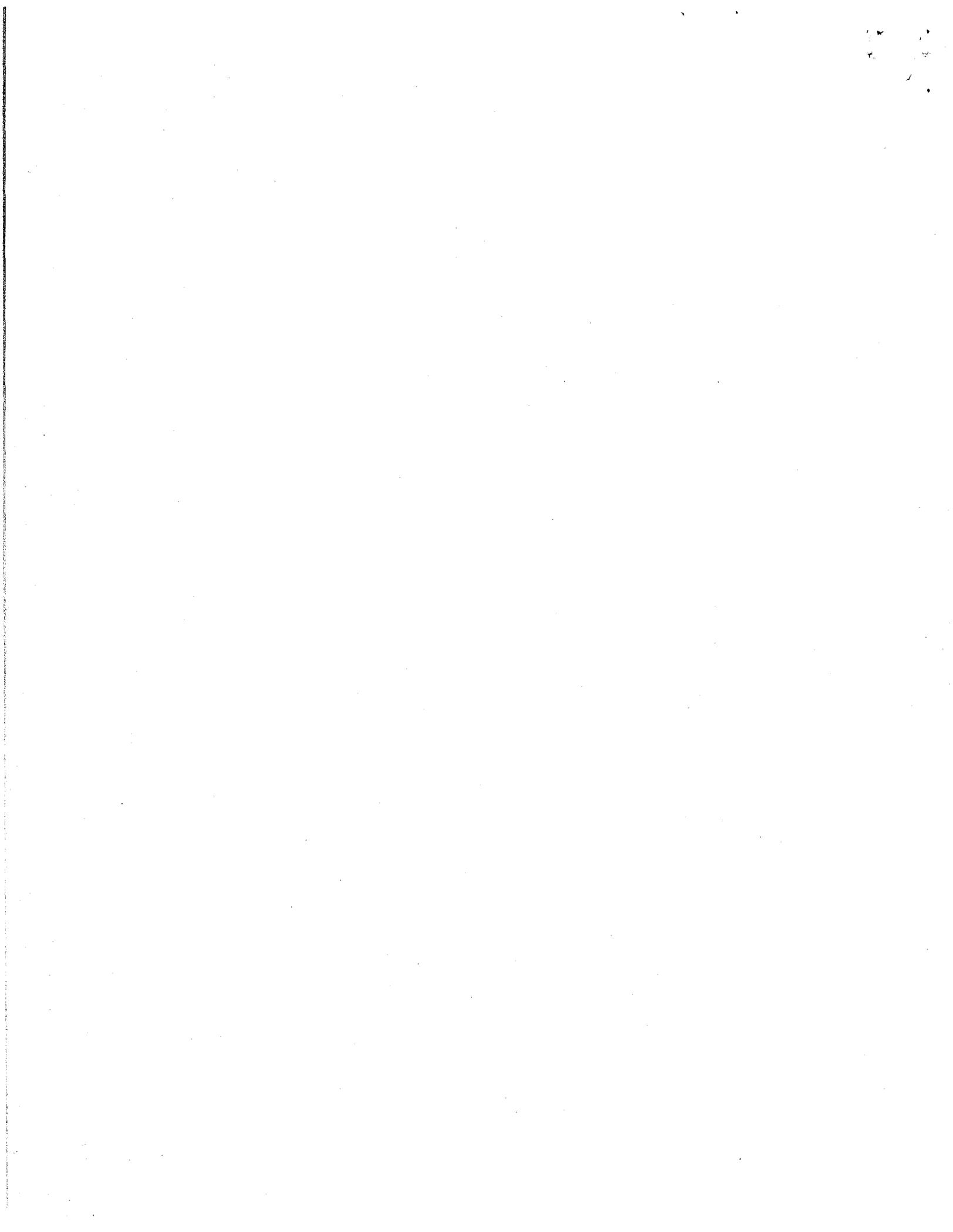


## **PROJECT COMMITMENTS:**

Chowan County  
Bridge No. 04 on SR 1207  
Over Rocky Hock Creek  
Federal Project BRZ-1207 (1)  
State Project 8.2030201  
TIP No. B-3435

### **Conditions Developed Through the Permitting Process**

1. Due to the presence of anadromous fish, including striped bass (*Morone saxatilis*), and in accordance with the Project Commitments contained within the Categorical Exclusion document dated May 2001, no in-water work shall be conducted from February 15<sup>th</sup> to October 31<sup>st</sup> of any year within the watercourse of Rocky Hock Creek.
2. The use of turbidity curtains to contain all bottom disturbing activities as required by CAMA Permit Condition No. 6 shall apply only to the watercourse of Rocky Hock Creek.
3. Live concrete shall not be allowed to contact the water in or entering into the stream.
4. Turbidity curtains shall be used to contain all bottom disturbing activities, including pile or casement installation, placement of rip-rap, excavation or filling.
5. The attached restoration plan will be implemented.
6. The Causeway Restoration area will be fully contained by silt fence.
7. All conditions of the attached USACE NW 14 permit (Action ID 200210803), the NCDWQ Section 401 Water Quality Certification and the NCDCM Major Development Permit will be followed.



Permit Class  
NEW

Permit Number  
105-02

STATE OF NORTH CAROLINA  
Department of Environment and Natural Resources  
and  
Coastal Resources Commission

# Permit

for

Major Development in an Area of Environmental Concern  
pursuant to NCGS 113A-118

Excavation and/or filling pursuant to NCGS 113-229

Issued to N.C. Department of Transportation, 1548 Mail Service Center, Raleigh, NC 27699-1548

Authorizing development in Chowan County at Rocky Hock Creek, SR 1207, Macedonia

, as requested in the permittee's application dated 4/18/02, including the  
attached workplan drawings (8): 4 dated 3/22/02; 1 dated 10/23/01; and 3 dated 3/13/02

This permit, issued on 8/2/02, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to fines, imprisonment or civil action; or may cause the permit to be null and void.

### B-3435, Bridge Replacement

- 1) Due to the presence of anadromous fish, including striped bass (*Morone saxatilis*), and in accordance with the Project Commitments contained within the Categorical Exclusion document dated May 2001, no in-water work shall be conducted from February 15<sup>th</sup> to October 31<sup>st</sup> of any year without prior approval of the NC Division of Coastal Management (DCM), in consultation with the NC Wildlife Resources Commission and the NC Division of Marine Fisheries. For the purposes of this moratorium, in-water is defined as those areas that are inundated at any time during construction.
- 2) Debris resulting from demolition of the existing bridge, including deck components, shall not enter wetlands or waters of the United States, even temporarily.
- 3) The bridge will be constructed using top down construction.

**(See attached sheets for Additional Conditions)**

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance as the case may be.

This permit must be accessible on-site to Department personnel when the project is inspected for compliance.

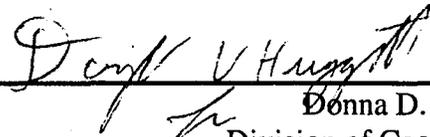
Any maintenance work or project modification not covered hereunder requires further Division approval.

All work must cease when the permit expires on

**December 31, 2005**

In issuing this permit, the State of North Carolina agrees that your project is consistent with the North Carolina Coastal Management Program.

Signed by the authority of the Secretary of DENR and the Chairman of the Coastal Resources Commission.

  
\_\_\_\_\_  
Donna D. Moffitt, Director  
Division of Coastal Management

This permit and its conditions are hereby accepted.

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

**ADDITIONAL CONDITIONS**

- 4) Placement of riprap shall be limited to the slopes underneath the proposed bridge, as depicted on the attached workplan drawings. The riprap material must be free from loose dirt or any pollutant. It must be of a size sufficient to prevent its movement from the site by wave or current action. The riprap material must consist of clean rock or masonry materials such as but not limited to granite or broken concrete.
- 5) Live concrete shall not be allowed to contact the water in or entering into the stream.
- 6) Turbidity curtains shall be used to contain all bottom disturbing activities, including pile or casement installation, placement of riprap, excavation or filling.
- 7) No vegetated wetlands will be excavated.
- 8) The temporary placement or double handling of excavated or fill materials within waters or vegetated wetlands is not authorized.
- 9) No excavated or fill material will be placed at any time in any vegetated wetlands or surrounding waters outside of the alignment of the fill area indicated on the workplan drawings.
- 10) All fill material must be clean and free of any pollutants, except in trace quantities.
- 11) If the permittee determines that additional permanent and/or temporary impacts will occur that are not shown on the attached permit drawings, additional authorization from DCM will be required.
- 12) All excavated materials will be confined above normal high water and landward of regularly or irregularly flooded wetlands behind adequate dikes or other retaining structures to prevent spillover of solids into any wetlands or surrounding waters.
- 13) All excavated materials and debris associated with the removal of the existing bridge and existing causeway fill material will be disposed of on an approved upland site. An upland disposal site must be selected and approved by DCM prior to the initiation of any construction activities.
- 14) Any mitigative measures or environmental commitments specifically made by the applicant in the CAMA permit application or Categorical Exclusion document for this project shall be implemented, regardless of whether or not such commitments are addressed by individual conditions of this permit.

**Sedimentation and Erosion Control**

- 15) The permittee shall follow Best Management Practices for the protection of Surface Waters and sedimentation and erosion control measures sufficient to protect aquatic resources.
- 16) This project must conform to all requirements of the NC Sedimentation Pollution Control Act and NC DOT's Memorandum of Agreement with the Division of Land Resources.
- 17) In order to protect water quality, runoff from construction must not visibly increase the amount of suspended sediments in adjacent waters.

**ADDITIONAL CONDITIONS**

- 18) Appropriate sedimentation and erosion control devices, measures or structures must be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses and property (e.g. silt fence, diversion swales or berms, sand fence, etc.).
- 19) All disturbed areas shall be properly graded and provided a ground cover sufficient to restrain erosion within thirty days of project completion.

**Mitigation**

- 20) On-site riverine mitigation will be carried out as described in the document titled "On-site mitigation plan for the proposed replacement of Bridge No. 04 on SR 1207 over Rocky Hock Creek in Chowan County, North Carolina" dated June 27, 2002.

**NOTE:** The removal of approximately 639 feet of existing causeway fill material should result in the restoration of approximately 0.60 acres of riverine wetlands and the enhancement of approximately 7.36 acres of riverine wetlands. Because this project will impact approximately 0.21 acres of riverine wetlands, there will be a net gain of approximately 0.39 acres of riverine restoration mitigation credits and approximately 7.36 acres of riverine enhancement mitigation credits.

- 21) This permit does not convey or imply approval of the suitability of the excess mitigation generated by this project as compensatory wetland mitigation for any particular future projects. The use of any portion of the excess mitigation generated by this project as compensatory mitigation for future projects will be approved on a case-by-case basis during the CAMA permit review and/or consistency process.
- 22) If the excess mitigation generated by this project is to be used as mitigation for impacts of future projects, written concurrence must be obtained from DCM that post-construction monitoring demonstrates that hydrologic success criteria have been met. Although annual monitoring reports will not be required, hydrologic monitoring data shall be made available to DCM at such time as the site is proposed for use as mitigation for future projects.
- 23) In accordance with the on-site mitigation plan, the permittee anticipates that there may be some areas where the current depth of fill material within the causeway, including asphalt, may be 8.0 feet deep or greater below the natural wetland elevation. The permittee will ensure the removal of all unsuitable material to prevent potential contamination of the adjacent water bodies. The permittee will fill any void left by the removal of this unsuitable material with clean, unconsolidated sand within approximately 6.0" to 1.0' of the elevation of the surrounding wetlands. The intent of this is to provide a base substrate while allowing the natural hydrologic process to move organic material and sediment into the top 6.0" to 12.0".

**ADDITIONAL CONDITIONS**

- 24) Due to the possibility that compaction, mechanized clearing and/or other site alterations might prevent the temporary wetland impact area from re-attaining wetland jurisdictional status, the permittee shall provide an annual update on the wetland areas temporarily impacted by this project. This annual update will consist of photographs provided during the agency monitoring report meeting and a brief report on the progress of these temporarily impacted areas in re-attaining wetland jurisdictional status. Three years after project completion, the permittee shall schedule an agency field meeting with DCM, the NC Division of Water Quality and the NC Wildlife Resources Commission to determine if the wetland areas temporarily impacted by this project have re-attained jurisdictional wetland status. If at the end of 3 years the wetland areas temporarily impacted by this project have not re-attained jurisdictional wetland status, NC DOT and the above listed agencies shall determine whether a compensatory wetland mitigation plan will be required.

**General**

- 25) Any relocation of utility lines will require additional authorization, either by way of a modification of this permit or by the utility company obtaining separate authorization.
- 26) This permit does not eliminate the need to obtain any additional permits, approvals or authorizations that may be required. This includes approval, if required, from the N.C. Division of Water Quality under stormwater management rules of the Environmental Management Commission. If a Stormwater Management Permit is required, it must be obtained and a copy provided to DCM prior to initiation of construction.

**NOTE:** The N.C. Division of Water Quality (DWQ) has authorized the proposed project under General Water Quality Certification No. 3371 (DWQ Project No. 020939), which was issued on 7/02/02. Any violation of the Certification approved by the DWQ will be considered a violation of this CAMA permit.

**NOTE:** The permittee is encouraged to contact the Public Health Pest Management Section at (919) 733-6407 to discuss mosquito control measures.



North Carolina Department of Environment and Natural Resources  
Division of Coastal Management

Michael F. Easley, Governor

Donna D. Moffitt, Director

William G. Ross Jr., Secretary

September 5, 2002

V. Charles Bruton, Ph.D., Manager  
Project Development and Environmental Analysis  
N.C. Department of Transportation  
1548 Mail Service Center  
Raleigh, NC 27699-1548

RE: Request for Modification of CAMA Permit No. 105-02 (TIP No. B-3435). Replacement of Bridge No. 04 on SR 1207 over Rocky Hock Creek, Chowan County.

Dear Dr. Bruton:

This letter is in response to the N.C. Department of Transportation's (NCDOT's) letter dated 8/22/02 requesting an amendment of CAMA Permit No. 105-02. This CAMA permit authorizes the replacement of an existing 160-foot long timber bridge over Rocky Hock Creek with an 850-foot long concrete bridge spanning Rocky Hock Creek and the adjacent cypress-gum swamp. Approximately 639 feet of causeway will be excavated from the existing roadbed and restored to its previous wetland hydrology.

The NCDOT letter requests that the in-water moratorium required by CAMA Permit Condition No. 1 be lifted for the causeway restoration area only. Condition No. 1 of CAMA Permit No. 105-02 states as follows:

"1) Due to the presence of anadromous fish, including striped bass (*Morone saxatilis*), and in accordance with the Project Commitments contained within the Categorical Exclusion document dated May 2001, no in-water work shall be conducted from February 15<sup>th</sup> to October 31<sup>st</sup> of any year without prior approval of the NC Division of Coastal Management (DCM), in consultation with the NC Wildlife Resources Commission and the NC Division of Marine Fisheries. For the purposes of this moratorium, in-water is defined as those areas that are inundated at any time during construction."

In a letter to the N.C. Division of Coastal Management (DCM) dated 8/22/02, NCDOT explained that they believe that the existing causeway area will immediately become inundated with water once the fill material is removed. Due to the length of the replacement bridge, and the duration of the proposed in-water work moratorium, NCDOT feels that there will not be sufficient time to construct the project within the normal one to two construction seasons. NCDOT estimates that not being allowed to work within the causeway restoration area from February 15 to October 31 could double the construction time.

1638 Mail Service Center, Raleigh, North Carolina 27699-1638  
Phone: 919-733-2293 \ FAX: 919-733-1495 \ Internet: <http://dcm2.enr.state.nc.us>

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After coordination with the N.C. Division of Marine Fisheries and the N.C. Wildlife Resources Commission, DCM has determined that permit condition No. 1 may be modified provided that the following conditions are met. This approval is based in part on the fact that the overall bridge replacement project will result in a net benefit to the Rocky Hock Creek system, including the surrounding wetlands.

1. The in-water work moratorium required by CAMA Permit Condition No. 1 shall only apply to the watercourse of Rocky Hock Creek. It shall not apply to the surrounding wetlands or causeway restoration area.
2. The use of turbidity curtains to contain all bottom disturbing activities required by CAMA Permit Condition No. 6 shall only apply to the watercourse of Rocky Hock Creek. It shall not apply to the surrounding wetlands or causeway restoration area. The permittee shall install turbidity curtains along the banks of Rocky Hock Creek to prevent sediment from the causeway restoration area from entering the watercourse.
3. The causeway restoration area will be fully contained by silt fence.
4. In order to protect water quality, runoff from construction must not visibly increase the amount of suspended sediments in adjacent waters. Sediment control measures must be installed and maintained as necessary to prevent sediment from entering the adjacent wetlands or watercourses.

This Letter of Refinement must be attached to CAMA Permit No. 105-02, which was issued on 8/2/02, and both documents must be readily available on site when a DCM representative inspects the project for compliance. All other conditions and stipulations of CAMA Permit No. 105-02 remain in force.

Please contact Cathy Brittingham at (919) 733-2293 x238 or Bill Arrington at (252) 808-2808 if you have any questions or concerns.

Sincerely,



Doug Huggett

Major Permits and Consistency Coordinator

Cc: Lindsey Riddick, NCDOT  
Bill Arrington, DCM  
David Cox, NCWRC  
Sara Winslow, NCDMF  
Mike Bell, USACE  
DCM-Morehead City

**On-site Mitigation Plan for the Proposed Replacement of  
Bridge No. 04 on SR 1207 over Rocky Hock Creek in  
Chowan County, North Carolina.**

**TIP No. B-3435**

**June 27, 2002**

***Overview:***

The NCDOT will replace the existing 160.0-foot long bridge over Rocky Hock Creek with a new bridge approximately 799.0 feet in length. The additional bridge length will allow for the removal of 639.0 linear feet of causeway in previously filled wetlands. The existing causeway will be removed and returned to an elevation resembling that of the adjacent wetlands.

***Causeway Removal:***

The removal of the old causeway will mean that approximately 0.6 acres of fill will be removed from wetlands associated with Rocky Hock Creek and the Chowan River. Approximately 639.0 feet of existing causeway will be lifted, restoring the riverine wetland underneath. It is anticipated that after the causeway is removed, the same wind tides that presented a flooding problem for SR 1207 will now represent a return to the natural hydrologic cycle for the surrounding wetlands. The water will be able to flow unimpeded beneath the new structure, allowing the natural wetland hydrology to return. Therefore, in addition to the 0.60 acres of restoration, the NCDOT proposes riverine wetland enhancement extending outward from the lifted causeway. The area of enhancement will be calculated

as a  $\frac{1}{4}$  circle, the radius of which is the length of the causeway removed. The total enhancement area will equal 7.36 acres.

Over the years, there has been a significant amount of compaction and settlement of the existing causeway. As a result of this settlement and the constant maintenance needed for continued operation of SR 1207, the NCDOT anticipates there may be some areas where the current depth of fill material within the causeway, including asphalt, may be 8.0 feet deep or greater below the natural wetland elevation. The NCDOT intends to ensure the removal of this material to prevent potential contamination of the adjacent Chowan River and Rocky Hock Creek. Due to the amount of fill material to be removed, there is the potential for a void to be left in place of the removed causeway. As has been the case in the past with similar projects, the NCDOT proposes to fill these voids with clean, unconsolidated sand. The voids will be filled to within 6.0 to 12.0 inches of the elevation of the surrounding wetlands.

The reason for a range of 6.0 to 12.0 inches is twofold. The filling of the anticipated void with clean sand was recommended by the USACE and is intended to provide a base substrate while allowing the natural hydrologic processes to move organic material and sediment into the top 6.0 to 12.0 inches, thereby providing a natural organic surface over time. By leaving the area that has been filled with loose sand slightly lower than the adjacent wetlands, it is anticipated that organic materials carried by the wind tides and/or brought in and out by the flushing of the adjacent wetlands will settle into the void. This will create the desired upper layer of natural material. It will also create small areas of micro-habitat for fish, amphibians, and small mammals.

The second reason for not attempting to match the exact elevation of the adjacent wetlands is that it is difficult to hit target elevations without mechanized grading activity. Allowing there to be a range of 6.0 to 12.0 inches avoids the possibility of unwanted consolidation of the material.

**Vegetation:**

The NCDOT does not propose any vegetation planting or monitoring. The area to be restored is underneath the new bridge and would be virtually impossible to plant and equally difficult to monitor. The NCDOT fully expects natural colonization of native flora to occur around and under the removed causeway.

The proposed enhancement area is currently a standing Cypress-Gum Swamp community. The canopy of this area is dominated by bald cypress (*Taxodium distichum*) and swamp tupelo (*Nyssa aquatica*). The NCDOT does not propose any vegetative manipulation in this area as it is expected that the greatest benefit to the system will be realized through the return of the natural hydrologic processes.

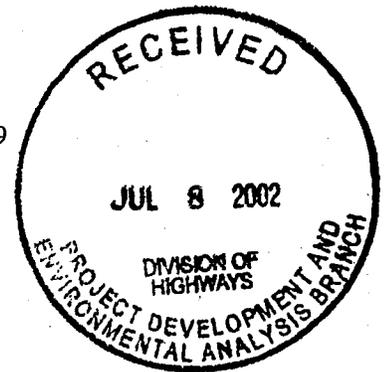
**Hydrology:**

The proximity of the enhancement and restoration areas to the Chowan River and Rocky Hock Creek ensure that both areas will be saturated and/or inundated for extended periods of time. However, as requested by the North Carolina Division of Coastal Management, the NCDOT will install a single surface water monitoring gauge and a corresponding rainfall gauge within the proposed enhancement area. The NCDOT will maintain and monitor the gauges for one year.

While it is difficult to quantify success criteria for the proposed enhancement, the NCDOT will consider both the restoration and enhancement areas a success if the areas exhibit periodic fluctuations of the water level that do not correspond to local rain events or that correspond disproportionately to local rain events. The intent here is to be able to identify fluctuations that can be attributed to wind tides versus those that may be due to precipitation.



July 2, 2002  
Chowan County  
DWQ Project No. 020939



**APPROVAL OF 401 Water Quality Certification**

Mr. William D. Gilmore, P.E., Manager  
Planning and Environmental Branch  
North Carolina Department of Transportation  
1548 Mail Service Center  
Raleigh, North Carolina, 27699-1548

Dear Mr. Gilmore:

You have our approval, as described in your application dated April 18, 2002, and in accordance with the attached conditions and those listed below, to place fill material in 0.17 acres of jurisdictional wetlands. In addition, you are authorized to perform mechanized clearing in 0.04 acres of jurisdictional wetlands. The project's purpose is the replacement of Bridge Number 4 on SR 1207 in Chowan County. The project shall be constructed in accordance with your application dated April 18, 2002. After reviewing your application, we have decided that this fill is covered by General Water Quality Certification Number 3371. This certification corresponds to the Regional Permit Number 198000291 issued by the Corps of Engineers. In addition, you should acquire any other federal, state or local permits before you proceed with your project including (but not limited to) Sediment and Erosion Control, Non-Discharge and Water Supply Watershed regulations. This approval will expire with the accompanying 404 permit unless otherwise specified in the Water Quality Certification.

This approval is valid solely for the purpose and design described in your application (unless modified below). Should your project change, you must notify the DWQ and submit a new application. If the property is sold, the new owner must be given a copy of this Certification and approval letter, and is thereby responsible for complying with all the conditions. If total wetland fills for this project (now or in the future) exceed one acre, or of total impacts to streams (now or in the future) exceed 150 linear feet, compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). For this approval to remain valid, you must adhere to the conditions listed in the attached certification.

1. Stormwater shall be directed to sheetflow at nonerosive velocities through the protected stream buffers.
2. Upon completion of the project, the NCDOT shall complete and return the enclosed "Certification of Completion Form" to notify DWQ when all work included in the 401 Certification has been completed. The responsible party shall complete the attached form and return it to the 401/Wetlands Unit of the Division of Water Quality upon completion of the project.

If you do not accept any of the conditions of this certification, you may ask for an adjudicatory hearing. You must act within 60 days of the date that you receive this letter. To ask for a hearing, send a written petition that conforms to Chapter 150B of the North Carolina General Statutes to the Office of Administrative Hearings, P.O. Box 27447, Raleigh, N.C. 27611-7447. This certification and its conditions are final and binding unless you ask for a hearing.



This letter completes the review of the Division of Water Quality under Section 401 of the Clean Water Act. If you have any questions, please contact John Hennessy at 919-733-5694.

Sincerely,

Alan W. Klimek, P.E.

**Attachments:**

cc: Wilmington District Corps of Engineers  
Corps of Engineers Washington Field Office  
DWQ Washington Regional Office  
Doug Huggett, DCM  
Central Files

c:\ncdot\TIP B-3435\wqc\020939wqc.doc



DWQ Project No.: \_\_\_\_\_ County: \_\_\_\_\_  
Applicant: \_\_\_\_\_  
Project Name: \_\_\_\_\_  
Date of Issuance of 401 Water Quality Certification: \_\_\_\_\_

**Certificate of Completion**

Upon completion of all work approved within the 401 Water Quality Certification or applicable Buffer Rules, and any subsequent modifications, the applicant is required to return this certificate to the 401/Wetlands Unit, North Carolina Division of Water Quality, 1621 Mail Service Center, Raleigh, NC, 27699-1621. This form may be returned to DWQ by the applicant, the applicant's authorized agent, or the project engineer. It is not necessary to send certificates from all of these.

**Applicant's Certification**

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Agent's Certification**

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

**Engineer's Certification**

\_\_\_\_\_ Partial \_\_\_\_\_ Final

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

Signature \_\_\_\_\_ Registration No. \_\_\_\_\_

Date \_\_\_\_\_

CAMA PERMIT CERTIFICATION

**GENERAL CERTIFICATION FOR PROJECTS ELIGIBLE FOR CORPS OF ENGINEERS  
GENERAL PERMIT NUMBER 198000291 (ISSUED TO THE NORTH CAROLINA DIVISION OF  
COASTAL MANAGEMENT AND RIPARIAN AREA PROTECTION RULES (BUFFER RULES)**

This General Certification is issued in conformity with requirement 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 2H, Section .0500 and 15 NCAC 2B .0200 for the discharge of fill material as described in General Permit 198000291 and for the Riparian Area Protection Rules (Buffer Rules) in 15A NCAC 2B .0200. This Certification replaces Water Quality Certification Number 3025 issued on September 6, 1995, Water Quality Certification Number 3112 issued on February 11, 1997, and Water Quality Certification Number 3274 issued June 1, 2000. This WQC is rescinded when the Corps of Engineers re-authorizes Regional General Permit 0291 or when deemed appropriate by the Director of DWQ.

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 conditions hereinafter set forth.

Conditions of Certification:

1. Activities authorized by CAMA major permits require written concurrence from the Division of Water Quality as well as compliance with all conditions of this General Certification;
2. Activities authorized by Coastal Area Management Act (CAMA) Minor or General Permits do not require written authorization from the Division of Water Quality as long as they comply with all other conditions of this General Certification;
3. In accordance with North Carolina General Statute Section 143-215.3D(e), any request for written concurrence for a 401 Water Quality Certification must include the appropriate fee. If a project also requires a CAMA Permit, one payment to both agencies shall be submitted and will be the higher of the two fees. The fee shall be collected and distributed between the two agencies in accordance with agreements reached between the Division of Water Quality and the Division of Coastal Management;
4. In accordance with 15A NCAC 2H .0506 (h) compensatory mitigation may be required for impacts to 150 linear feet or more of streams and/or one acre or more of wetlands. In addition, buffer mitigation may be required for any project with Buffer Rules in effect at the time of application for buffer impacts resulting from activities classified as "allowable with mitigation" within the "Table of Uses" section of the Buffer Rules or require a variance under the Buffer Rules. A determination of buffer, wetland and stream mitigation requirements shall be made for any Certification for this Nationwide Permit. The most current design and monitoring protocols from DWQ shall be followed and written plans submitted for DWQ approval as required in those protocols. When compensatory mitigation is required for a project, the mitigation plans must be approved by DWQ in writing before the impacts approved by the Certification occur. The mitigation plan must be implemented and/or constructed before any permanent building or structure on site is occupied. In the case of public road projects, the mitigation plan must be implemented before the road is opened to the travelling public;

## WQC #3371

5. Compensatory stream mitigation shall be required at a 1:1 ratio for all perennial and intermittent stream impacts that require application to DWQ in watersheds classified as ORW, HQW, Tr, WS-I and WS-II;
6. Impacts to any stream length in the Neuse and Tar-Pamlico River Basins (or any other major river basins with Riparian Area Protection Rules [Buffer Rules] in effect at the time of application) requires written concurrence from DWQ in accordance with 15A NCAC 2B.0200. New development activities located in the protected 50-foot wide riparian areas (whether jurisdictional wetlands or not) within the Neuse and Tar-Pamlico River Basins shall be limited to "uses" identified within and constructed in accordance with 15A NCAC 2B .0200. All new development shall be located, designed, constructed, and maintained to have minimal disturbance to protect water quality to the maximum extent practicable through the use of best management practices. Activities listed as "exempt" from these rules do not need to apply for written concurrence under this Certification;
7. All sediment and erosion control measures placed in wetlands or waters shall be removed and the original grade restored after the Division of Land Resources has released the project;
8. If an environmental document is required, this Certification is not valid until a Finding of No Significant Impact (FONSI) or Record of Decision (ROD) is issued by the State Clearinghouse;
9. That appropriate sediment and erosion control practices which equal or exceed those outlined in the most recent version of the "North Carolina Sediment and Erosion Control Planning and Design Manual" or the "North Carolina Surface Mining Manual" whichever is more appropriate (available from the Division of Land Resources (DLR) in the DENR Regional or Central Offices) shall be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices in order to assure compliance with the appropriate turbidity water quality standard;
10. Measures shall be taken to prevent live or fresh concrete from coming into contact with waters of the state until the concrete has hardened;
11. Additional site-specific conditions may be added to projects which have applied for CAMA major permits which are proposed under this Certification in order to ensure compliance with all applicable water quality and effluent standards;
12. When written concurrence is required, the applicant is required to use the most recent version of the Certification of Completion form to notify DWQ when all work included in the 401 Certification has been completed;
13. Concurrence from DWQ that this Certification applies to an individual project shall expire three years from the date of the cover letter from DWQ or on the same day as the expiration date of the corresponding General Permit 198000291, whichever is sooner.

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

# WQC #3371

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 that requires written concurrence under this certification, if it is determined that the project is likely to have a significant adverse effect upon water quality 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: 18 March 2002

DIVISION OF WATER QUALITY

By

Gregory J. Thorpe, Ph.D.

Acting Director

WQC # 3371



DEPARTMENT OF THE ARMY  
WILMINGTON DISTRICT, CORPS OF ENGINEERS

P.O. BOX 1890  
WILMINGTON, NORTH CAROLINA 28402-1890

IN REPLY REFER TO

August 9, 2002

Regulatory Division

Action ID No. 200210803, Nationwide Permit No. 14 (Linear Transportation Crossing)

Mr. V. Charles Bruton, Ph.D., Manager  
Project Development and  
Environmental Analysis Branch  
North Carolina Department of Transportation  
1548 Mail Service Center  
Raleigh, North Carolina 27699-1548

Dear Mr. Bruton:

Reference your application of April 18, 2002, for Department of the Army (DA) authorization to discharge fill material within waters of the United States, filling a total of 0.17 acres of wetlands, to replace Bridge No. 04 along SR 1207 with a new, smaller bridge. Approximately 639.0' of existing causeway will be removed and the elevation restored to resemble adjacent wetlands. The removal to the causeway will result in a restoration of 0.39 riverine wetland acres and an enhancement 7.36 acres of riverine wetlands adjacent to Rocky Hock Creek, in Chowan County (Federal Aid No. BRZ-1207(1); State Project No. 8.2030201; TIP No. B-3435).

For the purposes of the Corps of Engineers' Regulatory Program, Title 33, Code of Federal Regulations (CFR), Part 330.6, the March 9, 2000, Federal Register, Final Notice of Issuance, Reissuance, and Modification of Nationwide Permits (65 FR 12818), lists nationwide permits. Authorization, pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, was provided by Nationwide Permit #14 for fills for linear transportation crossings of waters of the United States (including wetlands and other special aquatic sites).

Your work is authorized by this nationwide permit provided it is accomplished in strict accordance with your submitted plans, the enclosed general conditions, and the following special conditions:

a. The permittee and its contractors and/or agents shall not excavate, fill, or perform landclearing at any time in the construction or maintenance of this project within waters and/or wetlands, except as authorized by this permit or any modification to this permit. There shall be no excavation from or waste disposal into jurisdictional wetlands or waters associated with this permit without appropriate modification of the permit.

b. To ensure that all borrow and waste activities occur on high ground, except as authorized by this permit, the permittee shall require its contractors and/or agents to identify all areas to be used to borrow material, or to dispose of dredged, fill, or waste material. The permittee shall ensure that all such areas comply with Special Condition (a.) of this permit, and shall require and maintain documentation of the location and characteristics of all borrow and disposal sites associated with this project. This information will include data regarding soils, vegetation and hydrology sufficient to clearly demonstrate compliance with Special Condition (a.) above. All information will be available to the Corps of Engineers on request.

c. The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this permit.

d. Due to the presence of anadromous fish in Rocky Hock Creek, a moratorium on instream work for the project will be observed from February 15<sup>th</sup> to October 31<sup>st</sup>.

e. Bridge No. 04 will be closed and the bridge and most associated fill will be removed from the Rocky Hock Creek floodplain to restore 0.39 riverine acres of on-site wetlands and enhance 7.36 riverine acres of on-site wetlands. The material will be removed to the elevation of the adjacent wetlands. This wetland restoration/enhancement effort will be accomplished pursuant to the mitigation entitled, "On-site Mitigation Plan for the proposed Replacement of Bridge No. 04 on SR 1207 over Rocky Hock Creek on Chowan County, North Carolina", dated June 27, 2002. The on-site restoration work must be completed within one year after construction begins to the satisfaction of the Corps of Engineers.

f. NCDOT will maintain the mitigation site in the condition established by the mitigation plan in perpetuity. Prohibited activities within the mitigation area specifically include, but are not limited to: the construction or placement of roads, walkways, buildings, signs, or structures of any kind (i.e., billboards, interior fences, etc.); filling, grading, excavation, leveling, or any other earth moving activity that may alter the drainage pattern on the property; the cutting, mowing, destruction, removal, damage or other alternation of any vegetation; disposal or storage of any debris, waste or garbage; except as may be authorized by the mitigation plans or subsequent modifications which are approved by the Corps of Engineers. In addition, the permittee shall take no action, whether on or off the mitigation property, which will adversely impact the restored or enhanced wetlands.

g. Special Condition (f.), above, runs with the land. The permittee shall not sell, lease, or otherwise convey any interest in the property used to satisfy mitigation requirements for this permit, to any third party, without the express written consent of the Corps of Engineers.

h. The permittee shall identify and survey the acreage at the on-site restoration/enhancement area utilized to satisfy Special Conditions (f.) and (g.) above and provide a copy of the survey to the US Army Corps of Engineers, Washington Regulatory Field Office, NCDOT Regulatory Project Manager, within 30 days of the date of this permit. In addition, a deed showing ownership of the acres of the on-site mitigation site must accompany the surveys.

This nationwide permit does not relieve you of the responsibility to obtain any required State or local approval.

This permit will be valid for two years from the date of this letter unless the nationwide authorization is suspended or 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 or are under contract to commence, in reliance upon the nationwide permit, will remain authorized. This is provided the activity is completed within twelve months of the date of the nationwide permit's expiration, modification or revocation.

Thank you for your time and cooperation. Questions or comments may be addressed to Mr. Michael Bell, Washington Regulatory Field Office, Post Office Box 1000, Washington, North Carolina, 27889, or telephone 252-975-1616, extension 26.

Sincerely,



David Franklin  
Chief, NCDOT Team  
Regulatory Division

Enclosures

Copies Furnished (without enclosures)

Mr. John Dorney  
NCDEN-DWQ  
Wetlands Section  
1621 Mail Service Center  
Raleigh, North Carolina 27666-1621

Mr. David Cox  
North Carolina Wildlife Resources Commission  
P.O. Box 118  
Northside, North Carolina 27564

Mr. Howard Hall  
U.S. Fish and Wildlife Service  
Fish and Wildlife Enhancement  
Post Office Box 33726  
Raleigh, North Carolina 27636-3726

Mr. Ron Sechler  
National Marine Fisheries Service  
101 Pivers Island  
Beaufort, North Carolina 28516

Mr. Ronald Mikulak, Chief  
Wetlands Protection Section - Region IV  
Water Management Division  
U.S. Environmental Protection Agency  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Ms. Cathy Brittingham  
Division of Coastal Management  
1638 Mail Service Center  
Raleigh, North Carolina 27699-1638



REPLY TO  
ATTENTION OF:

**DEPARTMENT OF THE ARMY  
WILMINGTON DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 1890  
WILMINGTON, NORTH CAROLINA 28402-1890**

**Permit Number: 2002010803/NW14/Chowan County**

**Permittee: NCDOT/SR 1207/BR#4/B-3435**

**Issuance: 9-August-2002**

**Project Manager: Michael Bell**

**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:**

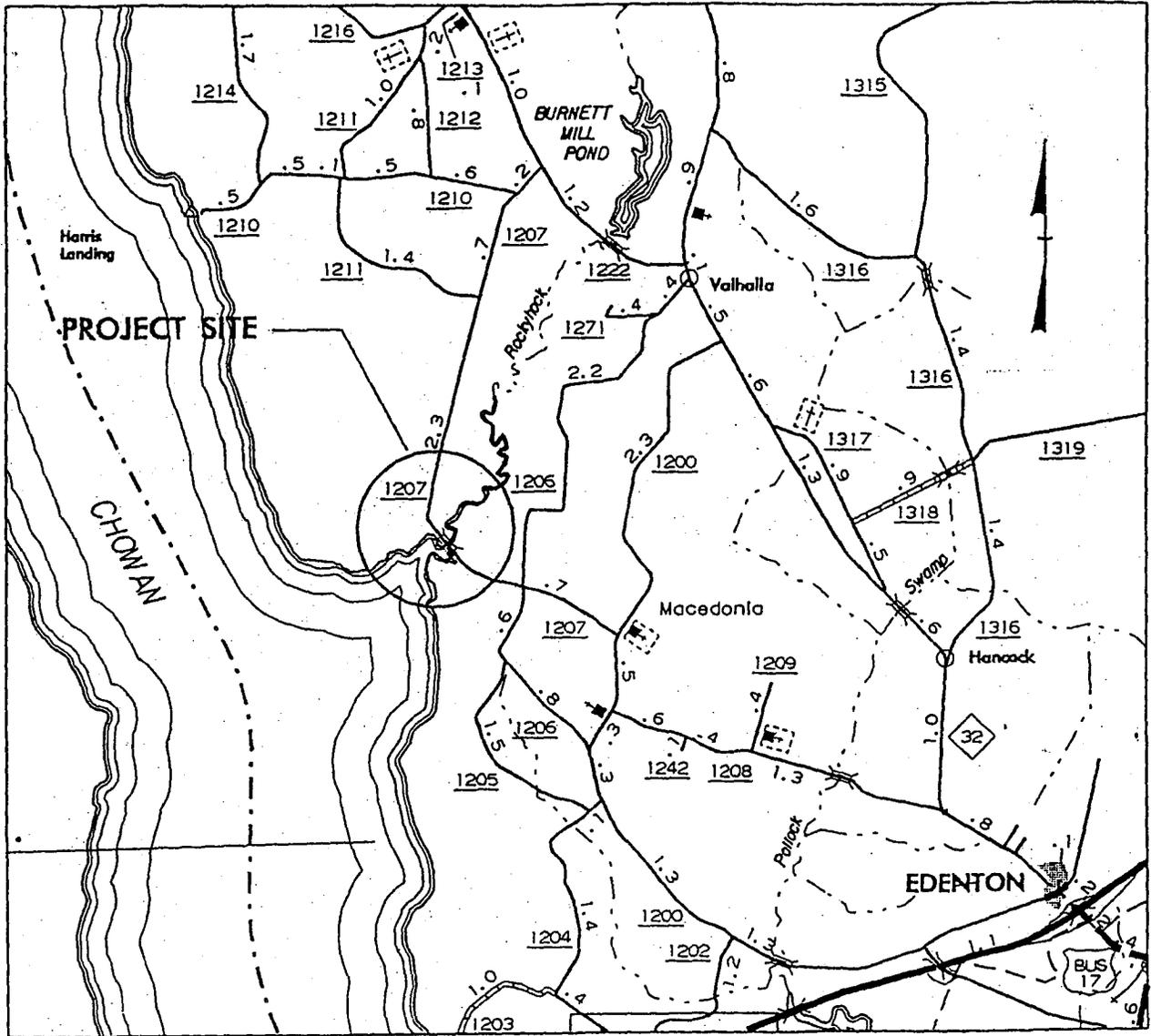
**US ARMY COE/WILMINGTON DISTRICT  
WASHINGTON REGULATORY FIELD OFFICE  
POST OFFICE BOX 1000  
WASHINGTON, NORTH CAROLINA 27889-1000**

**Please note that your permitted activity is subject to a compliance inspection by a U. S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification, or revocation.**

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

---

**Signature of Permittee**



APR 29 2002

# VICINITY MAPS

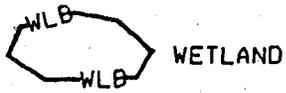
N. C. DEPT. OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
CHOWAN COUNTY

PROJECT: 8.2030201 (B-3435)  
REPLACE BRIDGE #4 ON SR 1207  
OVER ROCKYHOCK CREEK

SHEET 1 OF 12 10/23/01

# LEGEND

---WLB--- WETLAND BOUNDARY



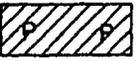
WETLAND



DENOTES FILL IN WETLAND



DENOTES FILL IN SURFACE WATER



DENOTES FILL IN SURFACE WATER (POND)



DENOTES TEMPORARY FILL IN WETLAND



DENOTES EXCAVATION IN WETLAND



DENOTES TEMPORARY FILL IN SURFACE WATER



DENOTES MECHANIZED CLEARING

———— FLOW DIRECTION

———<sup>TB</sup>——— TOP OF BANK

...WE... EDGE OF WATER

---C--- PROP. LIMIT OF CUT

---F--- PROP. LIMIT OF FILL

——▲—— PROP. RIGHT OF WAY

---NG--- NATURAL GROUND

---PL--- PROPERTY LINE

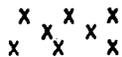
——TDE—— TEMP. DRAINAGE EASEMENT

——PDE—— PERMANENT DRAINAGE EASEMENT

——EAB—— EXIST. ENDANGERED ANIMAL BOUNDARY

——EPB—— EXIST. ENDANGERED PLANT BOUNDARY

----- WATER SURFACE

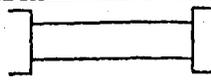


LIVE STAKES

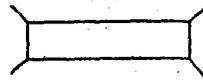


BOULDER

----- CORE FIBER ROLLS



PROPOSED BRIDGE



PROPOSED BOX CULVERT



PROPOSED PIPE CULVERT  
12'-48"  
PIPES  
54" PIPES  
& ABOVE

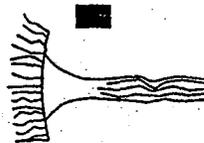
(DASHED LINES DENOTE EXISTING STRUCTURES)



SINGLE TREE



WOODS LINE



DRAINAGE INLET

ROOTWAD



RIP RAP



ADJACENT PROPERTY OWNER OR PARCEL NUMBER IF AVAILABLE

———— BZ1 ——— BUFFER ZONE 1

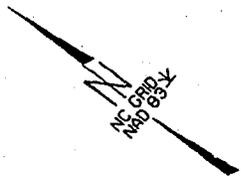
———— BZ2 ——— BUFFER ZONE 2

N. C. DEPT. OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
CHOWAN COUNTY

PROJECT: 8.2030201 (B-3435)  
REPLACE BRIDGE #4 ON SR 1207  
OVER ROCKYHOCK CREEK

SHEET 2 OF 12

WILLIAM S. BLAKEMORE, et ux



10

12

WOODED SWAMP

BEGIN BRIDGE

CLASS B RIPRAP

PROP. R/W



EXISTING

PDE

PDE

TO ROCKY HOCK.

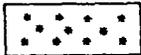
EXISTING R/W

BEGIN PROJECT

-L- Sta. 10+00.00

MATCH LINE 14+00

WOODED SWAMP



DENOTES MECHANIZED CLEARING



DENOTES FILL IN WETLAND

APR 29 2002

WILLIAM S. BLAKEMORE, et ux

NOTE: BRIDGE WILL BE BUILT USING TOP DOWN CONSTRUCTION

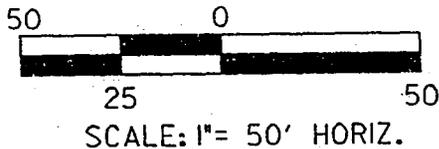
# PLAN VIEW SITE

N. C. DEPT. OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
CHOWAN COUNTY

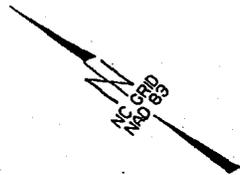
PROJECT: 8.2030201 (B-3435)

REPLACE BRIDGE #4 ON SR 1207  
OVER ROCKYHOCK CREEK

SHEET 3 OF 12 3/22/02



WILLIAM S. BLAKEMORE, et ux



NC GRID  
MCD 83

15

17

WOODED SWAMP

PROP. R/W



EXISTING R/W

MATCH LINE 14+00

MATCH LINE 18+00

SR 1207 ROCKY HOCK CREEK RD 200' BST

WLB

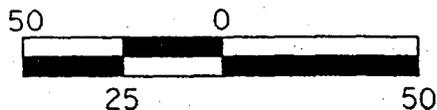
WLB

EXISTING R/W

CHOWAN RIVER

WILLIAM S. BLAKEMORE, et ux

WOODED SWAMP



SCALE: 1" = 50' HORIZ.

# PLAN VIEW SITE

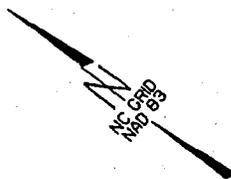
NOTE: BRIDGE WILL BE BUILT USING TOP  
DOWN CONSTRUCTION

N. C. DEPT. OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
CHOWAN COUNTY

PROJECT: 8.2030201 (B-3435)  
REPLACE BRIDGE #4 ON SR 1207  
OVER ROCKYHOCK CREEK

SHEET 4 OF 12 3/22/02



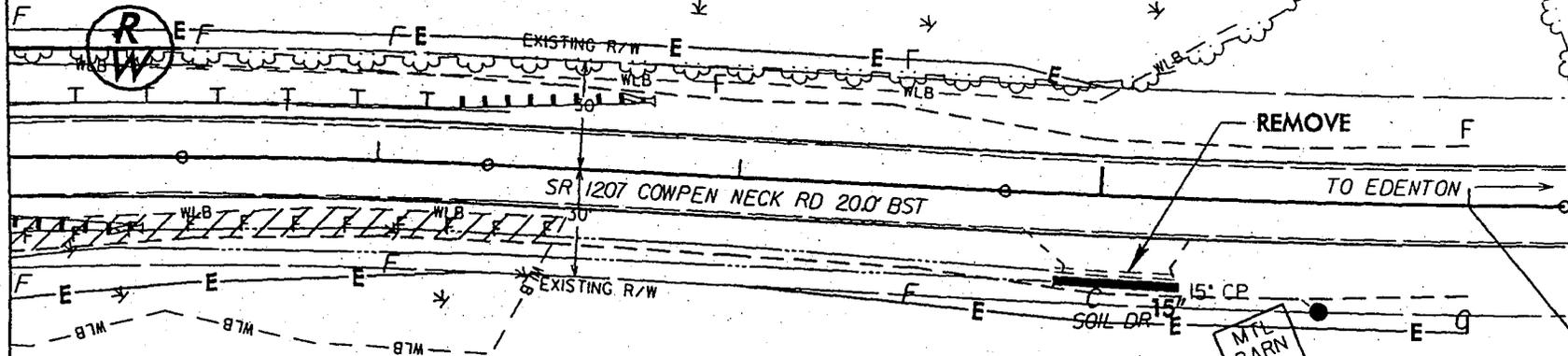


WILLIAM A. NIXON, et ux

WOODED SWAMP

25

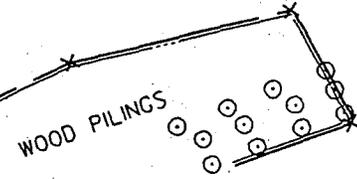
MATCH LINE 22+00



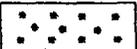
CYPRESS LANDING DEVELOPMENT COMPANY



END PROJECT  
-L- STA 26+00.00

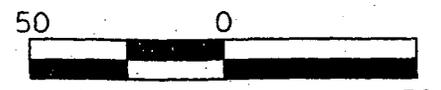


# PLAN VIEW SITE

 DENOTES MECHANIZED CLEARING

 DENOTES FILL IN WETLAND

NOTE: BRIDGE WILL BE BUILT USING TOP DOWN CONSTRUCTION



SCALE: 1" = 50' HORIZ.

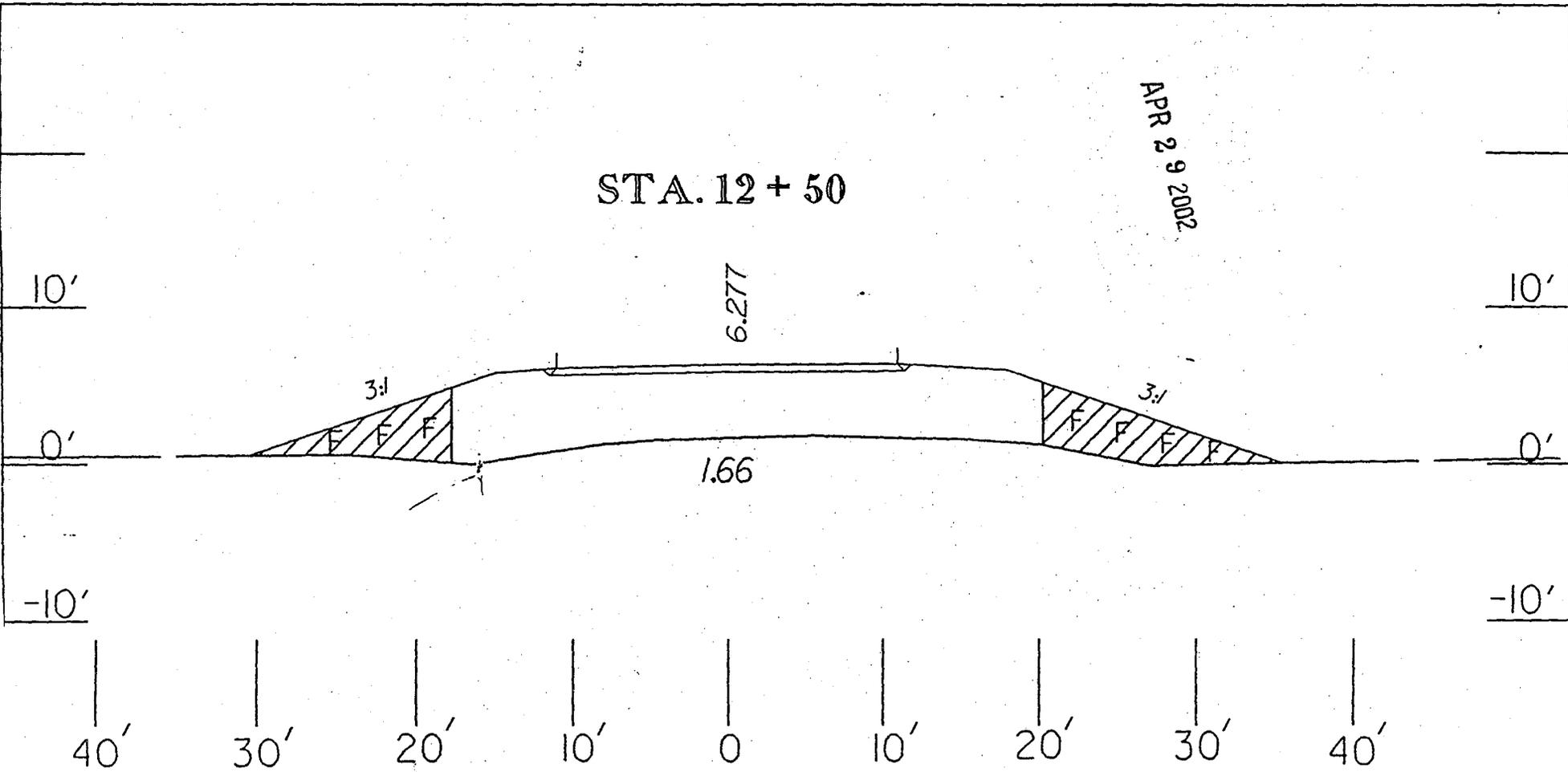
N. C. DEPT. OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
CHOWAN COUNTY

PROJECT: 8.2030201 (B-3435)  
REPLACE BRIDGE #4 ON SR 1207  
OVER ROCKYHOCK CREEK

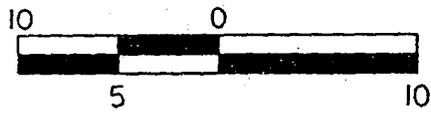
SHEET 6 OF 12 3/22/02

STA. 12 + 50

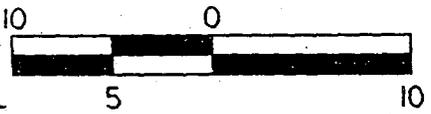
APR 29 2002



SECTION A-A



SCALE: 1" = 10' HORIZ.



SCALE: 1" = 10' VERT.



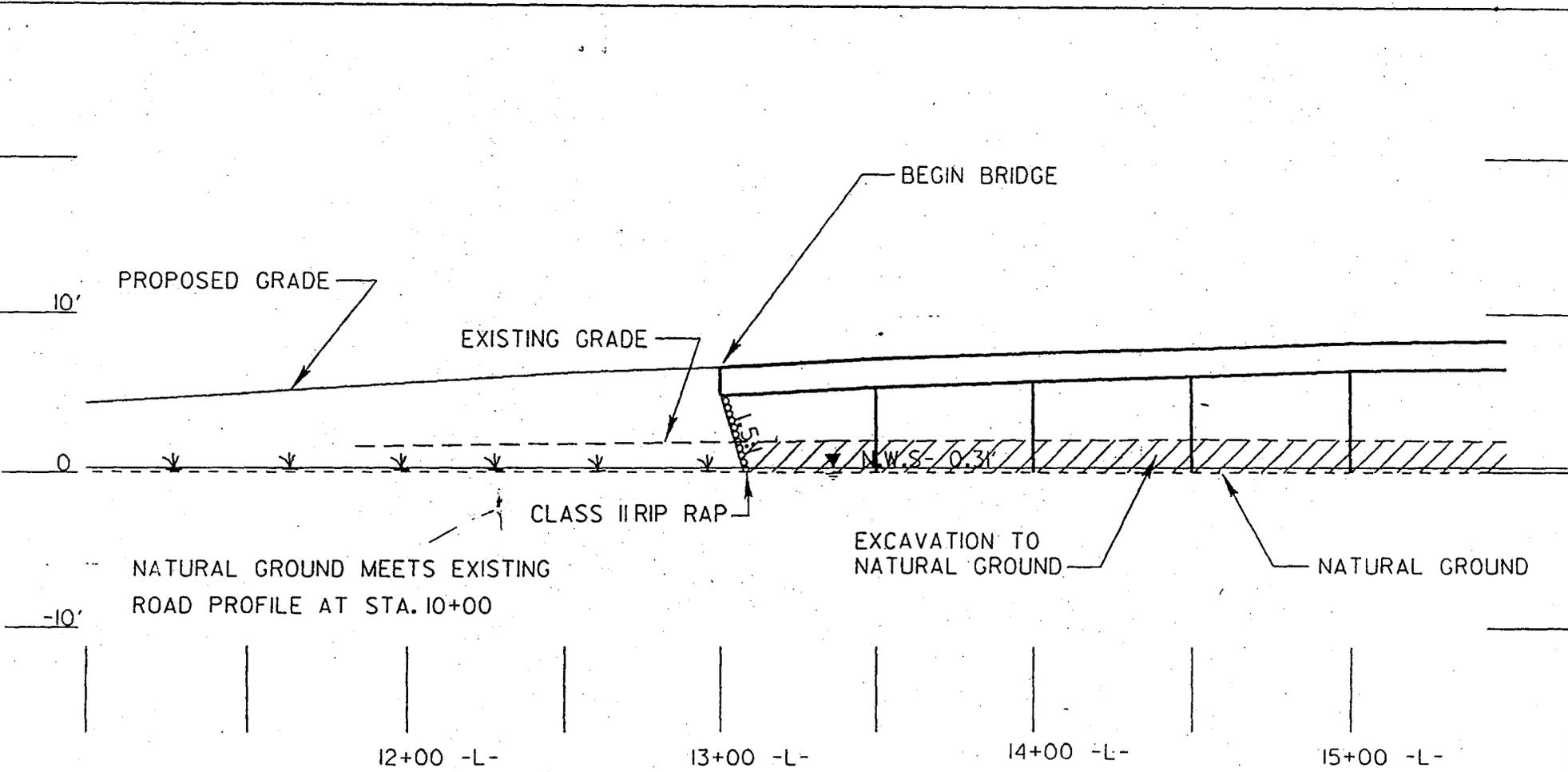
DENOTES FILL IN WETLAND

N. C. DEPT. OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
CHOWAN COUNTY

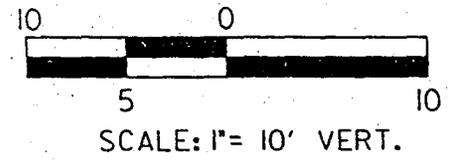
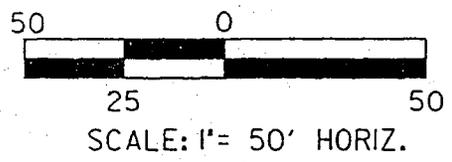
PROJECT: 8.2030201 (B-3435)

REPLACE BRIDGE #4 ON SR 1207  
OVER ROCKYHOCK CREEK

SHEET 7 OF 12 10/23/01



# PROFILE



N. C. DEPT. OF TRANSPORTATION  
 DIVISION OF HIGHWAYS  
 CHOWAN COUNTY

PROJECT: 8.2030201 (B-3455)

REPLACE BRIDGE #4 ON SR 1207  
 OVER ROCKYHOCK CREEK

SHEET 8 OF 17

PI= 16+00  
EL= 11.43'  
VC= 900'  
g1= 1.4278%  
g2= -1.3743

CL STA. 17+25 -L-  
ELEV.-8.07'  
17 SPANS @ 50'; 21" CORED SLAB  
90° SKEW

10'

0'

-10'

EXISTING GRADE

PROPOSED GRADE

EXCAVATION TO  
NATURAL GROUND

NATURAL GROUND

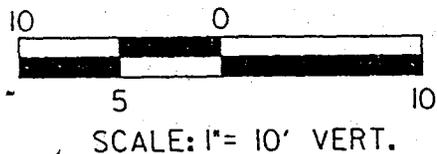
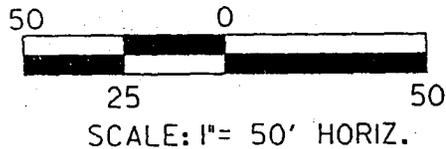
N.W.S. 0.31

16+00 -L-

17+00 -L-

18+00 -L-

19+00 -L-

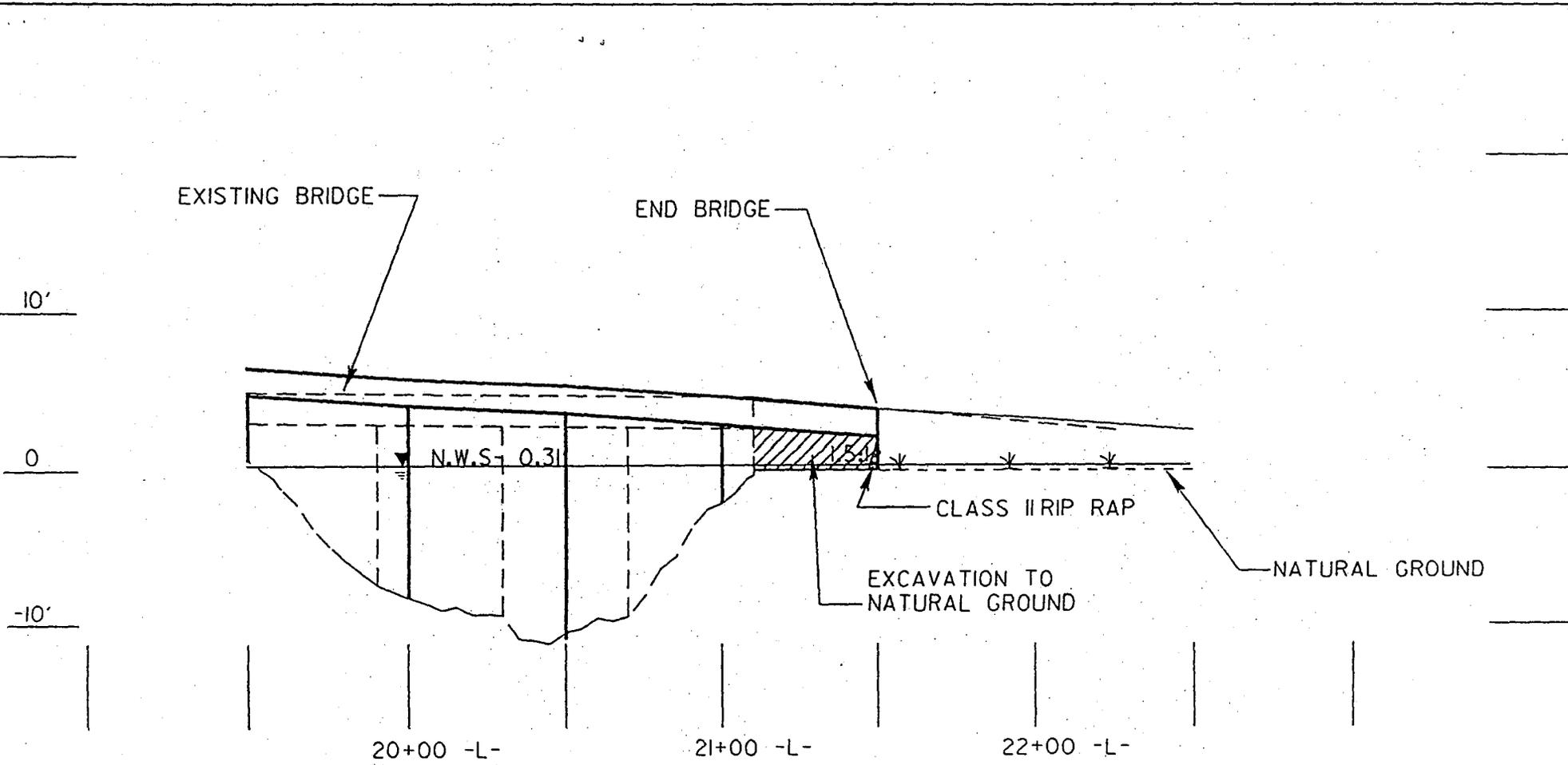


# PROFILE

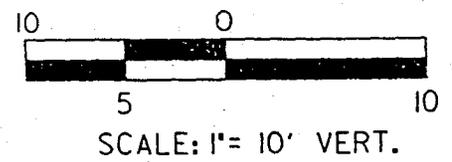
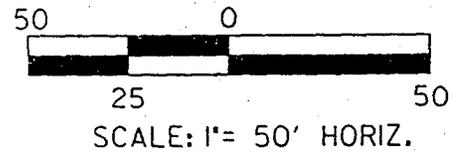
APR 29 2002

N. C. DEPT. OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
CHOWAN COUNTY  
PROJECT: 8.2030201 (B-3455)  
REPLACE BRIDGE #4 ON SR 1207  
OVER ROCKYHOCK CREEK

SHEET 9 OF 12 3/13/02



# PROFILE



N. C. DEPT. OF TRANSPORTATION  
 DIVISION OF HIGHWAYS  
 CHOWAN COUNTY  
 PROJECT: 8.2030201 (B-3435)  
 REPLACE BRIDGE #4 ON SR 1207  
 OVER ROCKYHOCK CREEK

## WETLAND PERMIT IMPACT SUMMARY

Site No.	Station (From/To) (-L-)	Structure Size / Type	WETLAND IMPACTS				SURFACE WATER IMPACTS					
			Fill In Wetlands (ac)	Temp. Fill In Wetlands (ac)	Excavation In Wetlands (ac)	Mechanized Clearing (Method III) (ac)	Fill In SW (Natural) (ac)	Fill In SW (Pond) (ac)	Temp. Fill In SW (ac)	Existing Channel Impacted (ft)	Natural Stream Design (ft)	
1	10+00 to 25+00	17 SPANS @ 50',21" CORED SLAB (OAL-850')	0.17			0.04						
			7405'			1742						
<b>TOTALS:</b>			0.17	0	0	0.04	0	0	0	0	0	0

APR 29 2002

N.C. DEPT. OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
  
CHOWAN COUNTY  
  
PROJECT: 8.2030201 ( B-3435 )  
  
SHEET 11 OF 21 ( 3/13/02 )

# PROPERTY OWNERS

NAMES AND ADDRESSES

PARCEL NO.

NAMES

ADDRESSES

WILLIAM S. BLAKEMORE

327 ROCKY HOCK CREEK RD.  
EDENTON, N.C. 27932

WILLIAM A. NIXON

244 COWPEN NECK RD.  
EDENTON, N.C. 27932

CYPRESS LANDING  
DEVELOPMENT COMPANY

P.O. BOX 445  
EDENTON, N.C. 27932

N. C. DEPT. OF TRANSPORTATION  
DIVISION OF HIGHWAYS  
CHOWAN COUNTY

PROJECT: 8.2030201 (B-3435)  
REPLACE BRIDGE #4 ON SR 1207  
OVER ROCKYHOCK CREEK

SHEET 12 OF 12

**NATIONWIDE PERMIT 14**  
**DEPARTMENT OF THE ARMY**  
**CORPS OF ENGINEERS**  
**FINAL NOTICE OF ISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS**  
**FEDERAL REGISTER**  
**AUTHORIZED MARCH 18, 2002**

**Linear Transportation Projects.** Activities required for the construction, expansion, modification, or improvement of linear transportation crossings (e.g., highways, railways, trails, and airport runways and taxiways) in waters of the United States, including wetlands, if the activity meets the following criteria:

1. This nationwide permit is subject to the following acreage and linear limits:
  - a. For linear transportation projects in non-tidal waters, provided the discharge does not cause the loss of greater than  $\frac{1}{2}$  acre of waters of the United States; or
  - b. For linear transportation projects in tidal waters, provided the discharge does not cause the loss of greater than  $\frac{1}{3}$  acre of waters of the United States.
  
2. The permittee must notify the District Engineer in accordance with General Condition 13 if any of the following criteria are met:
  - a. The discharge causes the loss of greater than  $\frac{1}{10}$  acre of waters of the United States;  
or
  - b. There is a discharge in a special aquatic site, including wetlands;
  - c. The notification must include a compensatory mitigation proposal to offset permanent losses of waters of the United States to ensure that those losses result only in minimal adverse effects to the aquatic environment and a statement describing how temporary losses of waters will be minimized to the maximum extent practicable;
  - d. For discharges in special aquatic sites, including wetlands and stream riffle and pool complexes, the notification must include a delineation of the affected special aquatic sites;
  - e. The width of the fill is limited to the minimum necessary for the crossing;
  - f. This permit does not authorize stream channelization, and the authorized activities must not cause more than minimal changes to the hydraulic flow characteristics of the stream, increase flooding, or cause more than minimal degradation of water quality of any stream (see General Conditions 9 and 21);

g. This permit cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars; and

h. The crossing is a single and complete project for crossing a water of the United States. Where a road segment (i.e., the shortest segment of a road with independent utility that is part of a larger project) has multiple crossings of streams (several single and complete projects) the Corps will consider whether it should use its discretionary authority to require an individual permit. (Sections 10 and 404)

**Note:** Some discharges for the construction of farm roads, forest roads, or temporary roads for moving mining equipment may be eligible for an exemption from the need for a Section 404 permit (see 33 CFR 323.4).

## NATIONWIDE PERMIT GENERAL CONDITIONS

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

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.
2. Proper Maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
3. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow.
4. Aquatic Life Movements. No activity may substantially disrupt the necessary life-cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.
5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.
6. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state or tribe in its Section 401 Water Quality Certification and Coastal Zone Management Act consistency determination.
7. Wild and Scenic Rivers. No activity may occur in a component of the National Wild and Scenic River System; or in a river officially designated by Congress as a 'study river' for possible inclusion in the system, while the river is in an official study status; unless the appropriate Federal agency, with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).
8. Tribal Rights. No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
9. Water Quality.
  - a. In certain states and tribal lands an individual 401 Water Quality Certification must be

obtained or waived (See 33 CFR 330.4(c)).

b. For NWPs 12, 14, 17, 18, 32, 39, 40, 42, 43, and 44, where the state or tribal 401 certification (either generically or individually) does not require or approve water quality management measures, the permittee must provide water quality management measures that will ensure that the authorized work does not result in more than minimal degradation of water quality (or the Corps determines that compliance with state or local standards, where applicable, will ensure no more than minimal adverse effect on water quality). An important component of water quality management includes stormwater management that minimizes degradation of the downstream aquatic system, including water quality (refer to General Condition 21 for stormwater management requirements). Another important component of water quality management is the establishment and maintenance of vegetated buffers next to open waters, including streams (refer to General Condition 19 for vegetated buffer requirements for the NWPs).

This condition is only applicable to projects that have the potential to affect water quality. While appropriate measures must be taken, in most cases it is not necessary to conduct detailed studies to identify such measures or to require monitoring.

10. Coastal Zone Management. In certain states, an individual state coastal zone management consistency concurrence must be obtained or waived (see 33 CFR 330.4(d)).

#### 11. Endangered Species.

a. No activity is authorized under any NWP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. Non-federal permittees shall notify the District Engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the project, or is located in the designated critical habitat and shall not begin work on the activity until notified by the District Engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that may affect Federally-listed endangered or threatened species or designated critical habitat, the notification must include the name(s) of the endangered or threatened species that may be affected by the proposed work or that utilize the designated critical habitat that may be affected by the proposed work. As a result of formal or informal consultation with the FWS or NMFS the District Engineer may add species-specific regional endangered species conditions to the NWPs.

b. Authorization of an activity by a NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the USFWS or the NMFS, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the USFWS and NMFS or their World Wide

Web pages at <http://www.fws.gov/r9endspp/endspp.html> and <http://www.nfms.noaa.gov/protres/overview/es.html> respectively.

12. Historic Properties. No activity that may affect historic properties listed, or eligible for listing, in the National Register of Historic Places is authorized, until the District Engineer has complied with the provisions of 33 CFR part 325, Appendix C. The prospective permittee must notify the District Engineer if the authorized activity may affect any historic properties listed, determined to be eligible, or which the prospective permittee has reason to believe may be eligible for listing on the National Register of Historic Places, and shall not begin the activity until notified by the District Engineer that the requirements of the National Historic Preservation Act have been satisfied and that the activity is authorized. Information on the location and existence of historic resources can be obtained from the State Historic Preservation Office and the National Register of Historic Places (see 33 CFR 330.4(g)). For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the notification must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

13. Notification.

a. Timing; where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a preconstruction notification (PCN) as early as possible. The District Engineer must determine if the notification is complete within 30 days of the date of receipt and can request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the District Engineer will notify the prospective permittee that the notification is still incomplete and the PCN review process will not commence until all of the requested information has been received by the District Engineer. The prospective permittee shall not begin the activity:

1. Until notified in writing by the District Engineer that the activity may proceed under the NWP with any special conditions imposed by the District or Division Engineer; or

2. If notified in writing by the District or Division Engineer that an Individual Permit is required; or

3. Unless 45 days have passed from the District Engineer's receipt of the complete notification and the prospective permittee has not received written notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

b. Contents of Notification: The notification must be in writing and include the following information:

1. Name, address and telephone numbers of the prospective permittee;

2. Location of the proposed project;

3. Brief description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), Regional General Permit(s), or Individual Permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP (Sketches usually clarify the project and when provided result in a quicker decision.);

4. For NWPs 7, 12, 14, 18, 21, 34, 38, 39, 40, 41, 42, and 43, the PCN must also include a delineation of affected special aquatic sites, including wetlands, vegetated shallows (e.g., submerged aquatic vegetation, seagrass beds), and riffle and pool complexes (see paragraph 13(f));

5. For NWP 7 (Cutfall Structures and Maintenance), the PCN must include information regarding the original design capacities and configurations of those areas of the facility where maintenance dredging or excavation is proposed;

6. For NWP 14 (Linear Transportation Projects), the PCN must include a compensatory mitigation proposal to offset permanent losses of waters of the US and a statement describing how temporary losses of waters of the US will be minimized to the maximum extent practicable;

7. For NWP 21 (Surface Coal Mining Activities), the PCN must include an Office of Surface Mining (OSM) or state-approved mitigation plan, if applicable. To be authorized by this NWP, the District Engineer must determine that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are minimal both individually and cumulatively and must notify the project sponsor of this determination in writing;

8. For NWP 27 (Stream and Wetland Restoration Activities), the PCN must include documentation of the prior condition of the site that will be reverted by the permittee;

9. For NWP 29 (Single-Family Housing), the PCN must also include:

i. Any past use of this NWP by the Individual Permittee and/or the permittee's spouse;

ii. A statement that the single-family housing activity is for a personal residence of the permittee;

iii. A description of the entire parcel, including its size, and a delineation of wetlands. For the purpose of this NWP, parcels of land measuring  $\frac{1}{4}$ -acre or less will not require a formal on-site delineation. However, the applicant shall provide an indication of where

the wetlands are and the amount of wetlands that exists on the property. For parcels greater than 1/4-acre in size, formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

iv. A written description of all land (including, if available, legal descriptions) owned by the prospective permittee and/or the prospective permittee's spouse, within a one mile radius of the parcel, in any form of ownership (including any land owned as a partner, corporation, joint tenant, co-tenant, or as a tenant-by-the-entirety) and any land on which a purchase and sale agreement or other contract for sale or purchase has been executed;

10. For NWP 31 (Maintenance of Existing Flood Control Facilities), the prospective permittee must either notify the District Engineer with a PCN prior to each maintenance activity or submit a five-year (or less) maintenance plan. In addition, the PCN must include all of the following:

i. Sufficient baseline information identifying the approved channel depths and configurations and existing facilities. Minor deviations are authorized, provided the approved flood control protection or drainage is not increased;

ii. A delineation of any affected special aquatic sites, including wetlands; and,

iii. Location of the dredged material disposal site;

11. For NWP 33 (Temporary Construction, Access, and Dewatering), the PCN must also include a restoration plan of reasonable measures to avoid and minimize adverse effects to aquatic resources;

12. For NWPs 39, 43 and 44, the PCN must also include a written statement to the District Engineer explaining how avoidance and minimization for losses of waters of the US were achieved on the project site;

13. For NWP 39 and NWP 42, the PCN must include a compensatory mitigation proposal to offset losses of waters of the US or justification explaining why compensatory mitigation should not be required. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

14. For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent nontidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that

the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

15. For NWP 43 (Stormwater Management Facilities), the PCN must include, for the construction of new stormwater management facilities, a maintenance plan (in accordance with state and local requirements, if applicable) and a compensatory mitigation proposal to offset losses of waters of the US. For discharges that cause the loss of greater than 300 linear feet of an intermittent stream bed, to be authorized, the District Engineer must determine that the activity complies with the other terms and conditions of the NWP, determine adverse environmental effects are minimal both individually and cumulatively, and waive the limitation on stream impacts in writing before the permittee may proceed;

16. For NWP 44 (Mining Activities), the PCN must include a description of all waters of the US adversely affected by the project, a description of measures taken to minimize adverse effects to waters of the US, a description of measures taken to comply with the criteria of the NWP, and a reclamation plan (for all aggregate mining activities in isolated waters and non-tidal wetlands adjacent to headwaters and any hard rock/mineral mining activities);

17. For activities that may adversely affect Federally-listed endangered or threatened species, the PCN must include the name(s) of those endangered or threatened species that may be affected by the proposed work or utilize the designated critical habitat that may be affected by the proposed work; and

18. For activities that may affect historic properties listed in, or eligible for listing in, the National Register of Historic Places, the PCN must state which historic property may be affected by the proposed work or include a vicinity map indicating the location of the historic property.

c. Form of Notification: The standard Individual Permit application form (Form ENG 4345) may be used as the notification but must clearly indicate that it is a PCN and must include all of the information required in (b) (1)-(18) of General Condition 13. A letter containing the requisite information may also be used.

d. District Engineer's Decision: In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. The prospective permittee may submit a proposed mitigation plan with the PCN to expedite the process. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal

before the permittee commences work. If the prospective permittee is required to submit a compensatory mitigation proposal with the PCN, the proposal may be either conceptual or detailed. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 days of receiving a complete PCN and determine whether the conceptual or specific proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the NWP.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the District Engineer will notify the applicant either:

1. That the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an Individual Permit;
2. that the project is authorized under the NWP subject to the applicant's submission of a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level; or
3. that the project is authorized under the NWP with specific modifications or conditions. Where the District Engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation proposal that would reduce the adverse effects on the aquatic environment to the minimal level. When conceptual mitigation is included, or a mitigation plan is required under item (2) above, no work in waters of the US will occur until the District Engineer has approved a specific mitigation plan.

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

For activities requiring notification to the District Engineer that result in the loss of greater than  $\frac{1}{2}$ -acre of waters of the US, the District Engineer will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an

additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. As required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

f. Wetland Delineations: Wetland delineations must be prepared in accordance with the current method required by the Corps (For NWP 29 see paragraph (b)(9)(iii) for parcels less than  $\frac{1}{4}$ -acre in size). The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 45-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

14. Compliance Certification. Every permittee who has received NWP verification from the Corps will submit a signed certification regarding the completed work and any required mitigation. The certification will be forwarded by the Corps with the authorization letter and will include:

a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;

b. A statement that any required mitigation was completed in accordance with the permit conditions; and

c. The signature of the permittee certifying the completion of the work and mitigation.

15. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the US authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit (e.g. if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the US for the total project cannot exceed  $\frac{1}{3}$ -acre).

16. Water Supply Intakes. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in the proximity of a public water supply intake except where the activity is for repair of the public water supply intake structures or adjacent bank stabilization.

17. Shellfish Beds. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in areas of concentrated shellfish

populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the CWA).

19. Mitigation. The District Engineer will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal.

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

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

c. Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland impacts requiring a PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. Consistent with National policy, the District Engineer will establish a preference for restoration of wetlands as compensatory mitigation, with preservation used only in exceptional circumstances.

d. Compensatory mitigation (i.e., replacement or substitution of aquatic resources for those impacted) will not be used to increase the acreage losses allowed by the acreage limits of some of the NWPs. For example,  $\frac{1}{4}$ -acre of wetlands cannot be created to change a  $\frac{3}{4}$ -acre loss of wetlands to a  $\frac{1}{2}$ -acre loss associated with NWP 39 verification. However,  $\frac{1}{2}$ -acre of created wetlands can be used to reduce the impacts of a  $\frac{1}{2}$ -acre loss of wetlands to the minimum impact level in order to meet the minimal impact requirement associated with NWPs.

e. To be practicable, the mitigation must be available and capable of being done considering costs, existing technology, and logistics in light of the overall project purposes. Examples of mitigation that may be appropriate and practicable include, but are not limited to: reducing the size of the project; establishing and maintaining wetland or upland vegetated buffers to protect open waters such as streams; and replacing losses of aquatic resource functions and values by creating, restoring, enhancing, or preserving similar functions and values, preferably in the same watershed.

f. Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated

buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineers may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment or, a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

g. Compensatory mitigation proposals submitted with the " notification" may be either conceptual or detailed. If conceptual plans are approved under the verification, then the Corps will condition the verification to require detailed plans be submitted and approved by the Corps prior to construction of the authorized activity in waters of the US.

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

20. Spawning Areas. Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., excavate, fill, or smother downstream by substantial turbidity) of an important spawning area are not authorized.

21. Management of Water Flows. To the maximum extent practicable, the activity must be designed to maintain preconstruction downstream flow conditions (e.g., location, capacity, and flow rates). Furthermore, the activity must not permanently restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters) and the structure or discharge of dredged or fill material must withstand expected high flows. The activity must, to the maximum extent practicable, provide for retaining excess flows from the site, provide for maintaining surface flow rates from the site similar to preconstruction conditions, and provide for not increasing water flows from the project site, relocating water, or redirecting water flow beyond preconstruction conditions. Stream channelizing will be reduced to the minimal amount necessary, and the activity must, to the maximum extent practicable, reduce adverse effects such as flooding or erosion downstream and upstream of the project site, unless the activity is part of a larger system designed to manage water flows. In most cases, it will not be a requirement to conduct detailed studies and monitoring of water flow.

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps

will defer to state and local authorities regarding management of water flow.

22. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable waters of the US, or discharges of dredged or fill material.

23. Waterfowl Breeding Areas. Activities, including structures and work in navigable waters of the US or discharges of dredged or fill material, into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

24. Removal of Temporary Fills. Any temporary fills must be removed in their entirety and the affected areas returned to their preexisting elevation.

25. Designated Critical Resource Waters. Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally listed threatened and endangered species, coral reefs, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment.

a. Except as noted below, discharges of dredged or fill material into waters of the US are not authorized by NWP's 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, and 44 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. Discharges of dredged or fill materials into waters of the US may be authorized by the above NWP's in National Wild and Scenic Rivers if the activity complies with General Condition 7. Further, such discharges may be authorized in designated critical habitat for Federally listed threatened or endangered species if the activity complies with General Condition 11 and the USFWS or the NMFS has concurred in a determination of compliance with this condition.

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

26. Fills Within 100-Year Floodplains. For purposes of this General Condition, 100-year floodplains will be identified through the existing Federal Emergency Management Agency's (FEMA) Flood Insurance Rate Maps or FEMA-approved local floodplain maps.

a. Discharges in Floodplain; Below Headwaters. Discharges of dredged or fill material into waters of the US within the mapped 100-year floodplain, below headwaters (i.e. five cfs), resulting in permanent above-grade fills, are not authorized by NWP's 39, 40, 42, 43, and 44.

b. Discharges in Floodway; Above Headwaters. Discharges of dredged or fill material into waters of the US within the FEMA or locally mapped floodway, resulting in permanent above-grade fills, are not authorized by NWPs 39, 40, 42, and 44.

c. The permittee must comply with any applicable FEMA-approved state or local floodplain management requirements.

27. Construction Period. For activities that have not been verified by the Corps and the project was commenced or under contract to commence by the expiration date of the NWP (or modification or revocation date), the work must be completed within 12-months after such date (including any modification that affects the project).

For activities that have been verified and the project was commenced or under contract to commence within the verification period, the work must be completed by the date determined by the Corps.

For projects that have been verified by the Corps, an extension of a Corps approved completion date maybe requested. This request must be submitted at least one month before the previously approved completion date.

#### **FURTHER INFORMATION**

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

#### **DEFINITIONS**

***Best Management Practices (BMPs):*** BMPs are policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or nonstructural. A BMP policy may affect the limits on a development.

***Compensatory Mitigation:*** For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands

and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts, which remain, after all appropriate and practicable avoidance and minimization has been achieved.

Creation: The establishment of a wetland or other aquatic resource where one did not formerly exist.

Enhancement: Activities conducted in existing wetlands or other aquatic resources that increase one or more aquatic functions.

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

Farm Tract: A unit of contiguous land under one ownership that is operated as a farm or part of a farm.

Flood Fringe: That portion of the 100-year floodplain outside of the floodway (often referred to as "floodway fringe").

Floodway: The area regulated by Federal, state, or local requirements to provide for the discharge of the base flood so the cumulative increase in water surface elevation is no more than a designated amount (not to exceed one foot as set by the National Flood Insurance Program) within the 100-year floodplain.

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

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

Loss of waters of the US: Waters of the US that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the US is the threshold measurement of the impact to existing waters for determining whether a project may qualify for a NWP; it is not a net threshold that is calculated after considering compensatory mitigation that

may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the US temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the US. Impacts to ephemeral waters are only not included in the acreage or linear foot measurements of loss of waters of the US or loss of stream bed, for the purpose of determining compliance with the threshold limits of the NWP's.

Non-tidal Wetland: An area that, during a year with normal patterns of precipitation has standing or flowing water for sufficient duration to establish an ordinary high water mark. Aquatic vegetation within the area of standing or flowing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. The term "open water" includes rivers, streams, lakes, and ponds. For the purposes of the NWP's, this term does not include ephemeral waters.

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

Permanent Above-grade Fill: A discharge of dredged or fill material into waters of the US, including wetlands, that results in a substantial increase in ground elevation and permanently converts part or all of the waterbody to dry land. Structural fills authorized by NWP's 3, 25, 36, etc. are not included.

Preservation: The protection of ecologically important wetlands or other aquatic resources in perpetuity through the implementation of appropriate legal and physical mechanisms. Preservation may include protection of upland areas adjacent to wetlands as necessary to ensure protection and/or enhancement of the overall aquatic ecosystem.

Restoration: Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state.

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

Single and Complete Project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear

projects, the "single and complete project" (i.e., a single and complete crossing) will apply to each crossing of a separate water of the US (i.e., a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations; each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies.

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

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

*Stream Channelization:* The manipulation of a stream channel to increase the rate of water flow through the stream channel. Manipulation may include deepening, widening, straightening, armoring, or other activities that change the stream cross-section or other aspects of stream channel geometry to increase the rate of water flow through the stream channel. A channelized stream remains a water of the US, despite the modifications to increase the rate of water flow.

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

*Vegetated Buffer:* A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters, which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (e.g., aquatic habitat for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to openwaters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement or preservation of aquatic habitats to ensure that activities authorized by NWPs result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

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

Waterbody: A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.

## **FINAL REGIONAL CONDITIONS FOR NATIONWIDE PERMITS IN THE WILMINGTON DISTRICT**

### 1. Waters Excluded from NWP or Subject to Additional Notification Requirements:

#### a. The Corps identified waters that will be excluded from use of this NWP. These waters are:

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

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

#### b. The Corps identified waters that will be subject to additional notification requirements for activities authorized by this NWP. These waters are:

1. Prior to the use of any NWP in any of the following North Carolina *designated waters*, applicants must comply with Nationwide Permit General Condition 13. In addition, the applicant must furnish a written statement of compliance with all of the conditions of the applicable Nationwide Permit. The North Carolina *designated waters* that require additional notification requirements are "Outstanding Resource Waters" (ORW) and "High Quality Waters" (HQW) (as defined by the North Carolina Division of Water Quality), or "Inland Primary Nursery Areas" (IPNA) (as defined by the North Carolina Wildlife Resources Commission), or contiguous wetlands (as defined by the North Carolina Division of Water Quality), or "Primary Nursery Areas" (PNA) (as defined by the North Carolina Division of Marine Fisheries).

2. Applicants for any NWP in a designated "Area of Environmental Concern" (AEC) in the twenty (20) coastal counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA), must also obtain the required CAMA permit. Construction activities may not commence until a copy of the approved CAMA permit is furnished to the

appropriate Wilmington District Regulatory Field Office (Wilmington Field Office – P.O. Box 1890, Wilmington, NC 28402 or Washington Field Office – P.O. Box 1000, Washington, NC 27889) for authorization to begin work.

3. Prior to the use of any NWP on a Barrier Island of North Carolina, applicants must comply with Nationwide Permit General Condition 13. In addition, the applicant shall furnish a written statement of compliance with all of the conditions listed of the applicable Nationwide Permit.

4. Prior to the use of any NWP in a “Mountain or Piedmont Bog” of North Carolina, applicants shall comply with Nationwide Permit General Condition 13. In addition, the applicant shall furnish a written statement of compliance with all of the conditions listed of the applicable NWP.

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

Mountain Bogs

Swamp Forest-Bog Complex  
Swamp Forest-Bog Complex (Spruce Subtype)  
Southern Appalachian Bog (Northern Subtype)  
Southern Appalachian Bog (Southern Subtype)  
Southern Appalachian Fen

Piedmont Bogs

Upland Depression Swamp Forest

5. Prior to the use of any NWP in Mountain Trout Waters within twenty-five (25) designated counties of North Carolina, applicants shall comply with Nationwide General Condition 13. In addition, the applicant shall furnish a written statement of compliance with all of the conditions listed of the applicable NWP. Notification will include a letter of comments and recommendations from the North Carolina Wildlife Resources Commission (NCWRC), the location of work, a delineation of wetlands, a discussion of alternatives to working in the Mountain Trout Waters, why other alternatives were not selected, and a plan to provide compensatory mitigation for all unavoidable adverse impacts to the Mountain Trout Waters. To facilitate coordination with the NCWRC, the proponent may provide a copy of the notification to the NCWRC concurrent with the notification to the District Engineer. The NCWRC will respond both to the proponent and directly to the Corps of Engineers.

The twenty-five (25) designated counties are:

Alleghany	Ashe	Avery	Yancey
Buncombe	Burke	Caldwell	Wilkes
Cherokee	Clay	Graham	Swain
Haywood	Henderson	Jackson	Surry
Macon	Madison	McDowell	Stokes
Mitchell	Polk	Rutherford	

6. Applicants shall notify the NCDENR Shellfish Sanitation Section prior to dredging in or removing sediment from an area closed to shell fishing where the effluent may be released to an area open for shell fishing or swimming in order to avoid contamination of the disposal area and allow a temporary shellfish closure to be made. Any disposal of sand to the beach should occur between November 1 and April 30 when recreational usage is low. Only clean sand should be used and no dredged sand from closed shell fishing areas. If beach disposal was to occur at times other than stated above or if sand from a closed shell fishing area is to be used, a swim advisory shall be posted and a press release shall be made. NCDENR Shellfish Sanitation Section must be notified before commencing this activity.

2. List of Final Corps Regional Modifications and Conditions for All Nationwide Permits

a. Individual or multiple NWP's may not be used for activities that result in the cumulative loss or degradation of greater than 300 total linear feet of perennial streambed or intermittent streambed that exhibits important aquatic function(s).

b. Prior to the use of any NWP (except 13, 27, and 39) for any activity that has more than a total of 150 total linear feet of perennial streambed impacts or intermittent streambed impacts (if the intermittent stream has important aquatic function), the applicant must comply with Nationwide Permit General Condition 13. In addition, the applicant shall furnish a written statement of compliance with all of the conditions listed of the applicable NWP. Compensatory mitigation is typically required for any impact that requires such notification. [Note: The Corps uses the Intermittent Channel Evaluation Form, located with Permit Information on the Regulatory Program Web Site, to aid in the determination of the intermittent channel stream status. Also, NWP's 13, 27 and 39 have specific reporting requirements.]

c. For all Nationwide Permits which allow the use of concrete as a building material, measures will be taken to prevent live or fresh concrete, including bags of uncured concrete, from coming into contact with waters of the state until the concrete has hardened.

d. For all Nationwide Permits that allow for the use of riprap material for bank stabilization, filter cloth must be placed underneath the riprap as an additional requirement of its use in North Carolina waters.

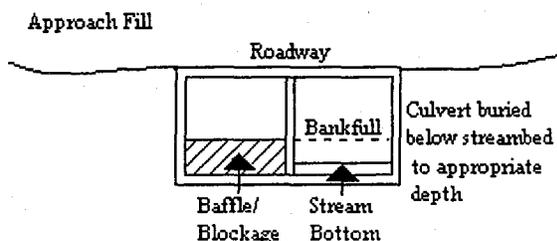
e. For all NWP's that involve the construction of culverts, measures will be included in the construction that will promote the safe passage of fish and other aquatic organisms. All culverts in the 20 CAMA coastal counties must be buried to a depth of one foot below the

bed of the stream or wetland. For all culvert construction activities, the dimension, pattern, and profile of the stream, (above and below a pipe or culvert), should not be modified by widening the stream channel or by reducing the depth of the stream. Culvert inverts will be buried at least one foot below the bed of the stream for culverts greater than 48 inches in diameter. For culverts 48 inches in diameter or smaller, culverts must be buried below the bed of the stream to a depth equal to or greater than 20 percent of the diameter of the culvert. Bottomless arch culverts will satisfy this condition. A waiver from the depth specifications in this Regional Condition may be requested in writing. The waiver will only be issued if it can be demonstrated that the impacts of complying with this Regional Condition would result in more adverse impacts to the aquatic environment.

3. Additional Regional Conditions Applicable to this Specific Nationwide Permit.

a. Natural channel design must be applied to the maximum extent practicable for stream relocations. The N.C. Wildlife Resources Commission and the N.C. Division of Water Quality provides Guidelines that are available to assist in the planning and design.

b. Bank-full flows (or less) shall be accommodated through maintenance of the

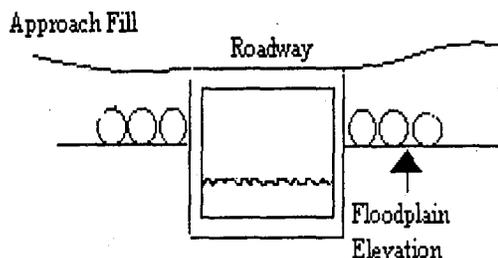


existing bank-full channel cross sectional area. Additional culverts at such crossings shall be allowed only to receive flows exceeding bank-full.

c. Flows exceeding bank-full shall be accommodated by installing culverts at the floodplain elevation where adjacent floodplain is available.

d. NWP 14 cannot be used for private projects located in tidal waters or tidal wetlands.

e. The activities associated with NWP 14 require a pre-construction notification if they will result in the loss of greater than 150 total linear feet of perennial streambed or intermittent stream that exhibits important aquatic function(s).



**NORTH CAROLINA DIVISION OF WATER QUALITY**  
**GENERAL CERTIFICATION CONDITIONS**

GC3375

1. Enumerating and Reporting of Impacts:

a. Streams - Impacts to streams as determined by the Division of Water Quality shall be measured as length of the centerline of the normal flow channel. Permanent and/or temporary stream impacts shall be enumerated on the entire project for all impacts regardless of which 404 Nationwide Permits are used. Stream relocations and streambed and/or bank hardening are considered to be permanent stream impacts. Any activity that results in a loss of use of stream functions including but not limited to filling, relocating, flooding, dredging and complete shading shall be considered stream impacts. Enumeration of impacts to streams shall include streams enclosed by bottomless culverts, bottomless arches or other spanning structures when a 404 Permit is used anywhere in a project unless the entire structure (including construction impacts) spans the entire bed and both banks of the stream, is only used for a road, driveway or path crossing, and is not mitered to follow the stream pattern. Impacts for dam footprints and flooding will count toward the threshold for stream impacts, but flooding upstream of the dam will not (as long as no filling, excavation, relocation or other modification of the existing stream dimension, pattern or profile occurs) count towards mitigation.

b. Wetlands - Impacts to wetlands as determined by the Division of Water Quality shall be measured as area. Permanent and/or temporary wetland impacts shall be enumerated on the entire project for all impacts regardless of which 404 Nationwide Permits are used. Any activity that results in a loss of use of wetland functions including but not limited to filling, draining, and flooding shall be considered wetland impacts. Enumeration of impacts to wetlands shall include activities that change the hydrology of a wetland when a 404 Permit is used anywhere in a project.

c. Lakes and Ponds – Lake and Pond Impacts Enumeration- Impacts to waters other than streams and wetlands as determined by the Division of Water Quality shall be measured as area. Permanent and/or temporary water impacts shall be enumerated on the entire project for all impacts proposed regardless of which 404 Nationwide Permits are used. Any activity that results in a loss of use of aquatic functions including but not limited to filling and dredging shall be considered waters impacts;

2. Proposed fill or substantial modification of wetlands or waters (including streams) under this General Certification requires application to and prior written concurrence from the Division of Water Quality;

3. Impacts to any stream length in the Neuse, Tar-Pamlico or Randleman River Basins (or any other major river basins with Riparian Area Protection Rules [Buffer Rules] in effect at the time

of application) requires written concurrence for this Certification from DWQ in accordance with 15A NCAC 2B.0200. Activities listed as "exempt" from these rules do not need to apply for written concurrence under this Certification. New development activities located in the protected 50-foot wide riparian areas (whether jurisdictional wetlands or not) within the Neuse and Tar-Pamlico River Basins shall be limited to "uses" identified within and constructed in accordance with 15A NCAC 2B .0200. All new development shall be located, designed, constructed, and maintained to have minimal disturbance to protect water quality to the maximum extent practicable through the use of best management practices;

4. Additional site-specific stormwater management requirements may be added to this Certification at DWQ's discretion on a case-by-case basis for projects that have or are anticipated to have impervious cover of greater than 30 percent. Site-specific stormwater management shall be designed to remove 85% TSS according to the latest version of DWQ's Stormwater Best Management Practices manual at a minimum. Additionally, in watersheds within one mile and draining to 303(d) listed waters, as well as watersheds that are classified as nutrient sensitive waters (NSW), water supply waters (WS), trout waters (Tr), high quality waters (HQW), and outstanding resource waters (ORW), the Division shall require that extended detention wetlands, bio-retention areas, and ponds followed by forested filter strips (designed according to latest version of the NC DENR Stormwater Best Management Practices Manual) be constructed as part of the stormwater management plan when a site-specific stormwater management plan is required. Alternative designs may be requested by the applicant and will be reviewed on a case-by-case basis by the Division of Water Quality. Approval of stormwater management plans by the Division of Water Quality's other existing state stormwater programs including appropriate local programs are sufficient to satisfy this Condition as long as the stormwater management plans meet or exceed the design requirements specified in this condition. This condition applies unless more stringent requirements are in effect from other state water quality programs.

a. Unless specified otherwise in the approval letter, the final, written stormwater management plan shall be approved in writing by the Division of Water Quality's Wetlands Unit before the impacts specified in this Certification occur.

b. The facilities must be designed to treat the runoff from the entire project, unless otherwise explicitly approved by the Division of Water Quality.

c. Also, before any permanent building or other structure is occupied at the subject site, the facilities (as approved by the Wetlands Unit) shall be constructed and operational, and the stormwater management plan (as approved by the Wetlands Unit) shall be implemented.

d. The structural stormwater practices as approved by the Wetlands Unit as well as drainage patterns must be maintained in perpetuity.

e. No changes to the structural stormwater practices shall be made without written authorization from the Division of Water Quality.

5. Compensatory stream mitigation shall be required at a 1:1 ratio for all perennial and intermittent stream impacts equal to or exceeding 150 feet and that require application to DWQ in watersheds classified as ORW, HQW, Tr, WS-I and WS-II;
6. In accordance with North Carolina General Statute Section 143-215.3D(e), any application for a 401 Water Quality Certification must include the appropriate fee. If a project also requires a CAMA Permit, one payment to both agencies shall be submitted and will be the higher of the two fees;
7. In accordance with 15A NCAC 2H .0506 (h) compensatory mitigation may be required for impacts to 150 linear feet or more of streams and/or one acre or more of wetlands. For linear public transportation projects, impacts equal to or exceeding 150 feet per stream may require mitigation. In addition, buffer mitigation may be required for any project with Buffer Rules in effect at the time of application for buffer impacts resulting from activities classified as "allowable with mitigation" within the "Table of Uses" section of the Buffer Rules or require a variance under the Buffer Rules. A determination of buffer, wetland and stream mitigation requirements shall be made for any Certification for this Nationwide Permit. The most current design and monitoring protocols from DWQ shall be followed and written plans submitted for DWQ approval as required in those protocols. When compensatory mitigation is required for a project, the mitigation plans must be approved by DWQ in writing before the impacts approved by the Certification occur, unless otherwise specified in the approval letter. The mitigation plan must be implemented and/or constructed before any permanent building or structure on site is occupied. In the case of public road projects, the mitigation plan must be implemented before the road is opened to the traveling public. Projects may also be implemented once payment is made to a private mitigation bank or other in-lieu fee program, as specified in the written concurrence of 401 Certification for a project. Please note that if a stream relocation is conducted as a stream restoration as defined in *The Internal Technical Guide for Stream Work in North Carolina*, April 2001, the restored length can be used as compensatory mitigation for the impacts resulting from the relocation;
8. For any project involving re-alignment of streams, a stream relocation plan must be included with the 401 application for written DWQ approval. Relocated stream designs should include the same dimensions, patterns and profiles as the existing channel, to the maximum extent practical. The new channel should be constructed in the dry and water shall not be turned into the new channel until the banks are stabilized. Vegetation used for bank stabilization shall be limited to native woody species, and should include establishment of a 30 foot wide wooded and an adjacent 20 foot wide vegetated buffer on both sides of the relocated channel to the maximum extent practical. A transitional phase incorporating coir fiber and seedling establishment is allowable. Also, riprap may be allowed if it is necessary to maintain the physical integrity of the stream, but the applicant must provide written justification and any calculations used to determine the extent of riprap coverage requested. If suitable stream mitigation is not practical on-site, then stream impact will need to be mitigated elsewhere;
9. Placement of culverts and other structures in waters, streams, and wetlands must be placed

below the elevation of the streambed to allow low flow passage of water and aquatic life unless it can be shown to DWQ that providing passage would be impractical. Design and placement of culverts including open bottom or bottomless arch culverts and other structures including temporary erosion control measures shall not be conducted in a manner that may result in aggradation, degradation or significant changes in hydrology of wetlands or stream beds or banks, adjacent to or upstream and down stream of the above structures. The applicant is required to provide evidence that the equilibrium shall be maintained if requested to do so in writing by DWQ. Additionally, when roadways, causeways or other fill projects are constructed across FEMA-designated floodways or wetlands, openings such as culverts or bridges must be provided to maintain the natural hydrology of the system as well as prevent constriction of the floodway that may result in aggradation, degradation or significant changes in hydrology of streams or wetlands;

10. That appropriate sediment and erosion control practices which equal or exceed those outlined in the most recent version of the "North Carolina Sediment and Erosion Control Planning and Design Manual" or the "North Carolina Surface Mining Manual" whichever is more appropriate (available from the Division of Land Resources (DLR) in the DENR Regional or Central Offices) shall be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices in order to assure compliance with the appropriate turbidity water quality standard;

11. All sediment and erosion control measures placed in wetlands and waters shall be removed and the original grade restored within two months after the Division of Land Resources has released the project;

12. That additional site-specific conditions may be added to projects proposed under this Certification in order to ensure compliance with all applicable water quality and effluent standards;

13. Measures shall be taken to prevent live or fresh concrete from coming into contact with waters of the state until the concrete has hardened;

14. If an environmental document is required, this Certification is not valid until a Finding of No Significant Impact (FONSI) or Record of Decision (ROD) is issued by the State Clearinghouse;

15. If this Certification is used to access building sites, all lots owned by the applicant must be buildable without additional fill beyond that explicitly allowed under other General Certifications. For road construction purposes, this Certification shall only be utilized from natural high ground to natural high ground;

16. When written concurrence is required, the applicant is required to use the most recent version of the Certification of Completion form to notify DWQ when all work included in the 401 Certification has been completed;

17. Concurrence from DWQ that this Certification applies to an individual project shall expire three years from the date of the cover letter from DWQ or on the same day as the expiration date of the corresponding Nationwide Permit 14, whichever is sooner.

**NORTH CAROLINA DIVISION OF COASTAL MANAGEMENT**  
**STATE CONSISTENCY**

Consistent.

Citations:

2002 Nationwide Permits - Federal Register Notice 15 Jan 2002

2002 Nationwide Permits Corrections - Federal Register Notice 13 Feb 2002

2002 Regional Conditions - Authorized 17 May 2002