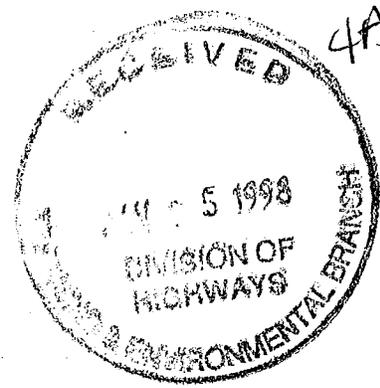




DEPARTMENT OF THE ARMY  
WILMINGTON DISTRICT, CORPS OF ENGINEERS

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

December 30, 1997



IN REPLY REFER TO

Regulatory Division

Action ID No. 199800551 and Nationwide Permit No. 14 and General Permit 19820031. **TIP R-2405BA**, Widen US Highway 17 from 0.26 miles northeast of SR 1571 (Scott's Hill Loop Road) to 0.37 miles southeast of Whitebridge Road, Pender County, North Carolina.

Mr. H. Franklin Vick, P.E., Manager  
Planning and Environmental Branch  
Division of Highways  
North Carolina Department of Transportation  
Post Office Box 25201  
Raleigh, North Carolina 27611-5201

Dear Mr. Vick:

Reference your application dated November 10, 1997, for Department of the Army (DA) authorization to place fill material into 0.07 acres of wetlands to widen US Highway 17 from north of Scott's Hill Loop Road to south of Whitebridge Road, Pender County, North Carolina (TIP R-2405BA).

For the purposes of the Corps of Engineers' Regulatory Program, the "December 13, 1996, Federal Register, Final Notice of Issuance, Reissuance, and Modification of Nationwide Permits (61 FR 65874)" listed 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 for fills for roads crossing waters of the United States (including wetlands and other special aquatic sites) provided:

- a. The width of the fill is limited to the minimum necessary for the actual crossing;
- b. The fill placed in waters of the United States is limited to a filled area of no more than one-third acre. Furthermore, no more than a total of 200 linear feet of the fill for the roadway can occur in special aquatic sites, including wetlands;
- c. The crossing is culverted, bridged or otherwise designed to prevent the restriction of, and to withstand, expected high flows and tidal flows, and to prevent the restriction of low flows and the movement of aquatic organisms;
- d. The crossing, including all attendant features, both temporary and permanent, is part of a single and complete project for crossing of a water of the United States; and

e. For fills in special aquatic sites, including wetlands, the permittee notifies the District Engineer (DE) according to the "Notification" general condition. This notification must include a delineation of affected special aquatic sites, including wetlands.

Your work is authorized by this nationwide permit provided it is accomplished in strict accordance with the following special condition, the enclosed general conditions and provided you receive a Section 401 water quality certification from the North Carolina Division of Water Quality (NCDWQ) and, in the coastal area, a consistency determination from the North Carolina Division of Coastal Management (NCDQM). You should contact Mr. John Dorney, telephone (919) 733-1786, regarding water quality certification, and Mr. Steve Benton, telephone (919) 733-2293, regarding consistency determination. This nationwide permit does not relieve you of the responsibility to obtain other required State or local approval.

This verification will be valid until the nationwide permit is modified, reissued or revoked, which will occur by February 11, 2002. It is incumbent upon you to remain informed of changes to the nationwide permits, which will be announced by public notice when they occur. If you commence, or are under contract to commence, this activity before the date the nationwide permit is modified or revoked, you will have twelve months from the date of the modification or revocation to complete the activity under the present terms and conditions of this nationwide permit.

We have evaluated potential impacts of your activity, and we have determined that your proposal will not likely have an adverse affect on any endangered species.

You also requested DA authorization to place fill material into 1.26 acres of wetlands to extend an existing box and pipe culvert. Pursuant to general permit No. 198200031, (copy enclosed), we authorized the placement of fill material associated with the construction, repair, or replacement of bridges across navigable waters and waters of the United States in North Carolina, including cofferdams, abutments, foundation seals, piers, temporary construction and access fills, approach fills, detour fills, and box culvert installation, as part of work conducted by or in full compliance with the standards and specifications of the North Carolina Department of Transportation (NCDOT).

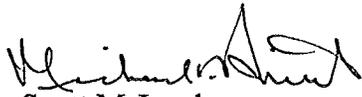
Your proposed work is authorized if you can comply with all permit conditions as well as the following special condition. Please read the enclosed permit to prevent an unintentional violation of Federal law. As this Department of the Army general permit does not relieve you of the responsibility to obtain any other required approvals, you should contact appropriate State and local agencies before beginning work.

#### Special Condition

a) All material resulting from the "ditch cleanout" at Site IV shall be deposited on High Ground.

When you have completed your work and any required mitigation, please sign and return the enclosed certification form.

Sincerely,

  
Scott McLendon  
Regulatory Project Manager

Enclosures

Copies Furnished (without enclosures):

Mr. John Hefner, Field Supervisor  
U.S. Fish and Wildlife Service  
Fish and Wildlife Enhancement  
Post Office Box 33726  
Raleigh, North Carolina 27636-3726

Mr. John Dorney  
Division of Water Quality  
North Carolina Department of  
Environment and Natural Resources  
4401 Reedy Creek Road  
Raleigh, North Carolina 27607

Mr. Bob Stroud  
Wilmington Office  
North Carolina Division of  
Coastal Management  
127 Cardinal Drive Extension  
Wilmington, North Carolina 28405

Permit Number: 199800551

Name of Permittee: North Carolina Department of Transportation

Date of Issuance: December 30, 1997

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:

District Engineer  
Wilmington District  
U.S. Army Corps of Engineers  
Attention: CESAW-RG  
Post Office Box 1890  
Wilmington, North Carolina 28402-1890

Please note that your permitted activity is subject to a compliance inspection by an 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.

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Signature of Permittee

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Date

**NATIONWIDE PERMIT #14: ROAD CROSSING.** Authorizes fills for roads crossing waters of the United States (including wetlands and other special aquatic sites) provided:

a. The width of the fill is limited to the minimum necessary for the actual crossing;

b. The fill placed in waters of the United States is limited to a filled area of no more than one-third acre. Furthermore, no more than a total of 200 linear feet of the fill for the roadway can occur in special aquatic sites, including wetlands;

c. The crossing is culverted, bridged or otherwise designed to prevent the restriction of, and to withstand, expected high flows and tidal flows, and to prevent the restriction of low flows and the movement of aquatic organisms;

d. The crossing, including all attendant features, both temporary and permanent, is part of a single and complete project for crossing of a water of the United States; and

e. For fills in special aquatic sites, including wetlands, the permittee notifies the District Engineer (DE) according to the "Notification" general condition. This notification must include a delineation of affected special aquatic sites, including wetlands.

#### NATIONWIDE PERMIT CONDITIONS

1. Navigation. No activity may cause more than a minimal adverse effect on navigation.

2. Proper maintenance. Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.

3. Erosion and siltation controls. Appropriate erosion and siltation controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date.

4. Aquatic life movements. No activity may substantially disrupt the movement of those species of aquatic life indigenous to the water body, including those species which normally migrate through the area, unless the activity's primary purpose is to impound water.

5. Equipment. Heavy equipment working in wetlands must be placed on mats, or other measures must be taken to minimize soil disturbance.

6. Regional and case-by-case conditions. The activity must comply with any regional conditions which may have been added by the Division Engineer (see 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.

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 effect 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 tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

9. Water quality certification. The permittee must comply with all conditions of General Water Quality Certification No. 3103, issued by the North Carolina Division of Water Quality (NCDWQ) on February 11, 1997.

10. Coastal zone management. The North Carolina Division of Coastal Management (NCCDM), has determined that this nationwide permit (NWP) is conditionally consistent with the North Carolina Coastal Management Program. Notification to and written concurrence from the NCCDM is required prior to work in the twenty (20) coastal counties of North Carolina.

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, or which is likely to destroy or adversely modify the critical habitat of such species. Non-Federal permittees shall notify the District Engineer if any listed species or critical habitat might be affected or is in the vicinity of the project, and shall not begin work on the activity until notified by the District Engineer that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

b. Authorization of an activity by a NWP does not authorize the take of a threatened or endangered species as defined under the Federal Endangered Species Act. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with incidental take provisions, etc.) from the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, both lethal and non-lethal takes of protected species are in violation of the Endangered Species Act. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. Fish and Wildlife Service and National Marine Fisheries Service or their world wide web pages at <http://www.fws.gov/r9endspp.html> and [http://kingfish.spp.mnfs.gov/tmcintyr/prot\\_res.html#ES](http://kingfish.spp.mnfs.gov/tmcintyr/prot_res.html#ES) and Recovery, respectively.

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

13. Notification.

a. Timing. Where required by the terms of the NWP, the prospective permittee must notify the District Engineer with a Pre-Construction Notification (PCN) as early as possible and shall not begin the activity:

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

(2) If notified by the District or Division Engineer that an individual permit is required; or

(3) Unless 30 days have passed from the District Engineer's receipt of the notification and the prospective permittee has not received notice from the District or Division Engineer. Subsequently, the permittee's right to proceed under the 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; and 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; and

(4) For NWP 14, the PCN must also include a delineation of affected special aquatic sites, including wetlands (see paragraph 13.f.).

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 the information required in b.(1)-(4) of General Condition 13. A letter may also be used.

d. District Engineer's Decision: In reviewing the pre-construction notification 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, optionally, submit a proposed mitigation plan with the pre-construction notification to expedite the process and the District Engineer will consider any optional mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed work are minimal. If the District Engineer determines that the activity complies with the terms and conditions of the NWP and that the effects are minimal, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary.

Any mitigation proposal must be approved by the District Engineer prior to commencing work. If the prospective permittee elects to submit a mitigation plan, the District Engineer will expeditiously review the proposed mitigation plan, but will not commence a second 30-day notification procedure. If the net adverse effects of the project (with the mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant stating that the project can proceed under the terms and conditions of the NPW.

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

(1) that the project does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit;

(2) that the project is authorized under the NWP subject to the applicant's submitting a mitigation proposal that would reduce the adverse effects to the minimal level; or

(3) that the project is authorized under the NWP with specific modifications or conditions.

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 NWP 14. The District Engineer will, upon receipt of a notification, provide immediately, e.g., facsimile transmission, overnight mail or other expeditious manner a copy to the appropriate offices of the Fish and Wildlife Service, State natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and if appropriate, the National Marine Fisheries Service. The agencies will then have 5 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 10 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies' concerns were considered. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notifications.

f. Wetlands Delineations. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic site. There may be some delay if the Corps does the delineation. Furthermore, the 30-day period will not start until the wetland delineation has been completed and submitted to the Corps, where appropriate.

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

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

(2) To the extent appropriate, permittees should consider mitigation banking and other forms of mitigation including contributions to wetland trust funds, inlieu fees to organizations such as The Nature Conservancy, State or county natural resource management agencies, where such fees contribute to the restoration, creation, replacement, enhancement or preservation of wetlands. Furthermore, examples of mitigation that may be

appropriate and practicable include but are not limited to: reducing the size of the project; establishing wetland or upland buffer zones to protect aquatic resource values; and replacing the loss of aquatic resource values by creating, restoring and enhancing similar functions and values. In addition, mitigation must address wetland impacts, such as functions and values, and cannot be simply used to offset the acreage of wetland losses that would occur in order to meet the acreage limits of some of the NWPs (e.g., for NWP 26, 5 acres of wetlands cannot be created to change a 6-acre loss of wetlands to a 1 acre loss; however, 2 created acres can be used to reduce the impacts of a 3-acre loss.).

14. Compliance certification. Every permittee who has received a 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. Multiple use of NWPs. In any case where NWP number 12 through 40 is combined with any other NWP number 12 through 40, as part of a single and complete project, the permittee must notify the District Engineer in accordance with paragraphs a., b., and c. of the Notification General Condition number 13. Any NWP number 1 through 11 may be combined with any other NWP without notification to the Corps, unless notification is otherwise required by the terms of the NWPs. As provided at 33 CFR 330.6(c) two or more different NWPs can be combined to authorize a single and complete project. However, the same NWP cannot be used more than once for a single and complete project.

## SECTION 404 ONLY CONDITIONS

In addition to the General Conditions, the following conditions apply only to activities that involve the discharge of dredged or fill material in waters of the United States, and must be followed in order for authorization by the NWP's to be valid:

1. Water supply intakes. No discharge of dredged or fill material may occur in the proximity of a public water supply intake except where the discharge is for the repair of the public water supply intake structure or adjacent bank stabilization.

2. Shellfish production. No discharge of dredged or fill material may occur in areas of concentrated shellfish production, unless the discharge is directly related to a shellfish harvesting activity authorized by NWP 4.

3. Suitable material. No discharge of dredged or fill material may consist of unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.,) and material discharges must be free from toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act).

4. Mitigation. Discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable at the project site (i.e., on-site), unless the District Engineer approves a compensation plan that the District Engineer determines is more beneficial to the environment than on-site minimization or avoidance measures.

5. Spawning areas. Discharges in spawning areas during spawning seasons must be avoided to the maximum extent practicable.

6. Obstructions to high flows. To the maximum extent practicable, discharges must not permanently restrict or impede the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

7. Adverse effects from impoundments. If the discharge creates an impoundment of water, adverse effects on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow shall be minimized to the maximum extent possible.

8. Waterfowl breeding areas. Discharges into breeding areas for migratory waterfowl must be avoided to the maximum extent practicable.

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

## REGIONAL CONDITIONS

1. Prior to the use of any NWP in a designated "Outstanding Resource Water" (ORW), a designated "High Quality Water" (HQW) or a designated "Primary Nursery Area" (PNA), of North Carolina or in contiguous wetlands (as defined by the North Carolina Division of Water Quality) to any of the above waters, proponents must notify the Wilmington District Engineer and furnish a written statement of compliance with all of the conditions of the applicable NWP. Notification will include the location of work; a description of work; a delineation of wetlands; a discussion of alternatives to working in the waters and/or contiguous wetlands and why alternatives were not selected; and a plan to provide compensatory mitigation for all unavoidable adverse impacts to the waters and/or adjacent wetlands as may be required by the applicable NWP. Work may proceed only after the permittee has received written, telephonic, or faxed approval from the authorized representative of the District Engineer to proceed. Normally such notice to proceed will be furnished within 30 calendar days of receipt of the above information.

2. Prior to use of any NWP in a designated "Area of Environmental Concern" (AEC) in the twenty (20) counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA), a proponent must first obtain the required CAMA permit and furnish a copy of the CAMA permit to the Wilmington District.

3. Prior to the use of any NWP on a barrier island of North Carolina, proponents must notify the Wilmington District Engineer and furnish a written statement of compliance with all of the conditions of the applicable NWP. Notification will include the location of work; a description of work; a delineation of wetlands; a discussion of alternatives to the work and why alternatives were not selected; and a plan to provide compensatory mitigation for all unavoidable adverse impacts to wetlands or waters as may be required by the conditions of the applicable NWP. Work may proceed only after the permittee has received written, telephonic, or faxed approval from the authorized representative of the District Engineer to proceed. Normally such notice to proceed will be furnished within 30 calendar days of receipt of the above information.

4. Prior to the use of any NWP in a "Mountain or Piedmont Bog" of North Carolina, proponents must notify the Wilmington District Engineer and furnish a written statement of compliance with all of the conditions of the applicable NWP. Notification will include the location of work; a description of work; a delineation of wetlands; a discussion of alternatives to the work and why alternatives were not selected; and a plan to provide compensatory mitigation for all unavoidable adverse impacts to wetlands or waters as may be required by the conditions of the applicable MWP. Work may proceed only after the permittee has received written, telephonic, or faxed approval from the authorized representative of the District Engineer to proceed. Normally such notice to proceed will be furnished within 30 calendar days of receipt of the above information.

5. Prior to use of any NWP for construction of animal waste facilities in waters and/or wetlands of North Carolina, proponents must notify the Wilmington District Engineer and furnish a written statement of compliance with all of the conditions of the applicable NWP. Notification will include the location of work; a description of work; a delineation of wetlands; a discussion of alternatives to the work and why alternatives were not selected; and, a plan to provide compensatory mitigation for all unavoidable adverse impacts to wetlands or waters as may be required by the applicable NWP. Work may proceed only after the permittee has received written, telephonic, or faxed approval from the authorized representative of the District Engineer to proceed. Normally such notice to proceed will be furnished within 30 calendar days of receipt of the above information.

NOTE: The total area of wetlands impacted, including wetlands drained by upland perimeter ditches or by other means, will be considered as cumulative impacts in making a decision to assert discretionary authority under any NWP.

6. Prior to the use of any NWP in mountain trout waters within twenty-five (25) designated counties of North Carolina, proponents must notify the Wilmington District Engineer and furnish a written statement of compliance with all of the conditions of the applicable NWP. Notification will include a letter of comments and recommendations from 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 and why alternatives were not selected; and a plan to provide compensatory mitigation for all unavoidable adverse impacts to the mountain trout waters. Work may proceed only after the permittee has received written, telephonic, or faxed approval from the authorized representative of the District to proceed. Normally such notice to proceed will be furnished within 30 calendar days of receipt of the above information.

a. The twenty-five (25) designated counties are:

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

b. To obtain the required letter of approval from the North Carolina Wildlife Resources Commission (NCWRC), a proponent should contact:

North Carolina Wildlife Resources Commission  
Habitat Conservation Program Manager  
512 North Salisbury Street  
Raleigh, NC 27611  
Telephone (919) 733-7638

7. Finished elevations of a road must not be lower than the elevation of surrounding wetlands to prevent the road from functioning as a ditch and draining adjacent wetlands.

8. The total area of wetlands impacted, including wetlands drained by ditches excavated adjacent to roads or by the road itself, must not exceed the 1/3 acre limitation of this permit.

9. All wetland crossings must be from previously existing high ground to previously existing high ground.

10. Culverts installed in crossings must be of sufficient size to allow normal surface water exchange between the wetlands on either side of the road and to maintain normal hydrology across the wetland.

11. All fill material must be obtained from an upland source.

12. Culverts may not be used on crossings of streams designated by the North Carolina Division of Marine Fisheries and the North Carolina Wildlife Resources Commission as anadromous fish spawning areas. Crossings must be bridged. This does not apply to culverts being replaced with culverts.

13. Uncontained concrete may not be poured in streams.

#### STATE CONSISTENCY CONDITIONS

1. The roadway width shall be minimized as much as practicable and that no practicable alternative exists.
2. All fill material must be obtained from an upland source.
3. Bridging is required in areas designated as anadromous fish spawning areas by the North Carolina Division of Marine Fisheries or the North Carolina Wildlife Resources Commission in order to allow the continued use of upstream waters for spawning. Use of culverts in these situations is not authorized.
4. Where culverts are used, they should be buried one foot into the substrate if possible to maintain and facilitate fish passage.
5. If concrete is used, care must be taken to prevent wet concrete from contacting stream water.
6. If the proposed activity is within the North Carolina Coastal Area, the applicant must receive written concurrence from the North Carolina Division of Coastal Management (NCDQM) that the activity is consistent with the North Carolina Coastal Management Program.

#### GENERAL CERTIFICATION CONDITIONS

1. Proposed fill or substantial modification under this General Certification requires written concurrence from the North Carolina Division of Water Quality (NCDWQ).
2. The width of the fill is limited to the minimum needed to the actual crossing.
3. The roadway width shall be minimized as much as practicable and no practicable alternative exists.
4. Pipes shall be installed under the road in all necessary stream crossings to carry at least the 25-year storm event as outlined in the most recent edition of the "North Carolina Sediment and Erosion Control Planning and Design Manual" or the "North Carolina Surface Mining Manual" so as not to impede flow.
5. 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" (available from the North Carolina Division of Land Management in the DEHNR Regional or Central Offices) will be utilized to prevent exceedances of the appropriate turbidity water quality standard (50 NTU's in streams and rivers not designated as trout by NCDWQ, 25 NTU's in all saltwater classes and all lakes and reservoirs, and 10 NTU's in trout waters).
6. All sediment and erosion control measures placed in wetlands or waters shall be removed and the natural grade restored after the North Carolina Division of Land Resources has released the project.
7. Measures shall be taken to prevent live or fresh concrete from coming into contact with waters of the State until the concrete has hardened.

8. If this Certification is used to access building sites, all lots must be buildable without additional fill beyond that allowed under other General Certifications. Deed restrictions must be placed on the remaining wetlands on these lots to restrict future fill. The North Carolina Division of Water Quality (NCDWQ) shall be sent copies of all deed restrictions applied to these lots.

9. This Certification shall be utilized for roads from natural high ground to natural high ground. The Certification for NWP No. 18 may not be used in conjunction with this Certification to create high ground for road access.

10. If an environmental document is required, this Certification is not valid until a FONSI or ROD is issued by the State Clearinghouse.

11. Additional site-specific conditions may be added to this Certification to ensure compliance with all applicable water quality and effluent standards.

12. Concurrence from the North Carolina Division of Water Quality (NCDWQ) that this Certification applies to an individual project shall expire three years from the date of the cover letter from the NCDEM.

DEPARTMENT OF THE ARMY  
Wilmington District, Corps of Engineers  
Post Office Box 1890  
Wilmington, North Carolina 28402-1890

**General Permit No. 198200031**  
**Name of Permittee: General Public**  
**Effective Date: January 1, 1998**  
**Expiration Date: December 31, 2002**

**DEPARTMENT OF THE ARMY  
GENERAL PERMIT**

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

District Engineer  
U.S. Army Engineer District, Wilmington  
Corps of Engineers  
Post Office Box 1890  
Wilmington, North Carolina 28402-1890

**TO AUTHORIZE THE DISCHARGE OF DREDGED OR FILL MATERIAL IN WATERS OF THE UNITED STATES, INCLUDING WETLANDS, ASSOCIATED WITH THE CONSTRUCTION, MAINTENANCE AND REPAIR OF BRIDGES SPANNING NAVIGABLE WATERS AND WATERS OF THE UNITED STATES, INCLUDING COFFERDAMS, ABUTMENTS, FOUNDATION SEALS, PIERS, APPROACH FILLS, DETOUR FILLS, BOX CULVERT INSTALLATION AND TEMPORARY CONSTRUCTION AND ACCESS FILLS, AS PART OF WORK CONDUCTED BY THE NORTH CAROLINA DEPARTMENT OF TRANSPORTATION (NCDOT) OF OTHER STATE, FEDERAL OR LOCAL GOVERNMENTAL ENTITY, IN THE STATE OF NORTH CAROLINA.**

1. Special Conditions.

a. Written confirmation that the proposed work complies with this general permit must be received from the Wilmington District Engineer prior to the commencement of any work. To enable this determination to be made, the permittee must furnish the Wilmington District Engineer the following information:

- (1) A map indicating the location of the work.
- (2) Plans of the proposed work (on 8-1/2-inch by 11-inch paper) showing all pertinent structures, elevations, dimensions and quantities of materials and locations of all structures and/or fill in wetlands or waterward of the normal/high water elevation contours.
- (3) A brief discussion of the affected wetlands, to include types or vegetation present.
- (4) Approximate commencement and completion dates.
- (5) Plans, including timetables and techniques, for construction, stabilization and removal of all temporary fills.
- (6) Names and addresses of adjoining property owners.

b. In the case of fills of one acre or less, including permanent approach fills, detour fills and fills associated with culvert installation, the Corps of Engineers' Project Manager will determine, after appropriate onsite visits and review of plans, if the impact on wetlands is likely to be such as to require review by Federal and State agencies. If it is determined that impacts are minimal or can be made minimal by changes agreed to by the applicant, a letter of authorization to proceed will be provided. If it is determined that review by Federal and State agencies is necessary to fully evaluate impacts, copies of all plans and materials will be forwarded to the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), the U.S. Environmental Protection Agency (EPA) and the North Carolina Department of Environment, Health and Natural Resources. These agencies will furnish comments to the Wilmington District Engineer within thirty (30) days.

c. In cases of fills greater than one acre, copies of all plans and materials will be forwarded to the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), the U.S. Environmental Protection Agency (EPA) and the North Carolina Department of Environment, Health and Natural Resources. These agencies will furnish comments to the Wilmington District Engineer in thirty (30) days. In cases of land disturbing activities comprising more than one acre, a Sedimentation/Erosion Control Plan will be filed with the North Carolina Division of Land Resources, Land Quality Section, thirty (30) days prior to commencing work.

d. In the event that any Federal agency maintains an objection or any required State authorization is outstanding, no notice to proceed will be given until objections are resolved and State authorizations are issued.

e. No work will proceed until after the applicant has received written notice to proceed from the Wilmington District Engineer. This notice may include additional conditions and/or restrictions. Copies of the notice to proceed will be furnished to the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), the U.S. Environmental Protection Agency (EPA) and the North Carolina Department of Environment, Health and

Natural Resources with a brief description of the work, including the area of wetlands affected and the quantity of fill material.

f. Upon completion of any work authorized by this general permit, all temporary fills will be completely removed and the area reestablished as a wetland by restoring natural hydrology and native vegetation. Stream contours and riparian vegetation will be reestablished upon the removal of temporary culverts. In such instances, a restoration plan will be submitted to the Wilmington District Engineer for approval. Information in the restoration plan will be in accordance with special condition i. below.

g. All fills, temporary and permanent, must be stabilized to prevent erosion of fill material into adjacent waters or wetlands.

h. In cases where new, permanent fill is to be established and an older fill (approaches, causeways, etc.) is no longer to be maintained as a roadway, the older fill shall be removed and the area reestablished as a wetland. In such instances, a restoration plan will be submitted to the Wilmington District Engineer for approval. Information in the restoration plan will be in accordance with special condition i. below.

i. Discharges of dredged or fill material into waters of the United States, including wetlands, must be minimized or avoided to the maximum extent practicable. In reviewing an activity, the Wilmington District Engineer will first determine whether the activity will result in more than minimal adverse environmental effects. For activities that are determined to have more than minimal impacts, compensatory mitigation will be required. To expedite the process, the applicant will provide a mitigation plan with the request for authorization. Creation and restoration proposals will include, but are not necessarily limited to, a description of work, a schedule of work and a monitoring plan, and they will be in accordance with currently approved Wilmington District and/or Corps-wide mitigation guidelines. Mitigation banking may, in some situations, be considered acceptable mitigation.

j. Activities in any mountain trout waters must comply with all pH, temperature and turbidity criteria established for such waters by the North Carolina Wildlife Resources Commission (NCWRC) and/or the North Carolina Division of Water Quality (NCDWQ). Work that may result in the sedimentation of trout waters will generally be prohibited from November 1 to April 15, of any year, to avoid impacts on trout spawning.

k. Before discharging dredged or fill material into waters of the United States, including wetlands, in the twenty-five (25) mountain counties of North Carolina that contain trout waters, the applicant will obtain a letter of approval from the North Carolina Wildlife Resources Commission (NCWRC) and furnish a copy of the letter to the Wilmington District Engineer.

The applicant should contact:

North Carolina Wildlife Resources Commission  
Habitat Conservation Program Manager  
512 North Salisbury Street  
Raleigh, North Carolina 27611  
Telephone (919) 733-7638

The counties in which this condition applies are:

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

l. This permit does not authorize the use of culverts in areas designated as anadromous fish spawning areas by the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC).

m. No activity may disrupt the movement of those species of aquatic life indigenous to the waterbody, including those species which normally migrate through the area.

n. This permit generally allows the permanent installation of culverts to 100 feet in length. For culverts longer than 100 feet, the proposed application will be closely evaluated to determine if unacceptable impacts on movement of aquatic organisms would result. In such cases, approval may not be provided.

o. All culverts shall be installed with the bottom placed one (1) foot below the natural stream bottom and at the same slope as the natural bottom or an open-bottom culvert or spanning structure shall be used.

p. All activities authorized by this general permit shall, to the extent practicable, be conducted "in the dry", with barriers installed between work areas and aquatic habitat to protect that habitat from cement or other pollutants. Water in the work area will be pumped to holding and settling ponds as practicable, and water will not be allowed to re-enter the water column until decanted.

q. Should all or part of a proposed development activity be located within an Area of Environmental Concern (AEC) as designated by the North Carolina Coastal Resources Commission, a Coastal Area Management Act (CAMA) permit is required from the North Carolina Division of Coastal Management. Should an activity within or potentially affecting an AEC be proposed by a Federal agency, a consistency determination pursuant to 15 CFR 930 must be provided to the North Carolina Division of Coastal Management before the onset of the proposed activity.

r. All work will comply with Water Quality Certification No. 3100, issued by the North Carolina Division of Water Quality (NCDWQ) on February 11, 1997. Proposed fill or substantial modification of waters or wetlands for this General Certification requires written concurrence from the North Carolina Division of Water Quality.

## 2. General Conditions.

a. All activities authorized by this general permit that involve the discharge of dredged or fill material in waters of the United States will be consistent with applicable water quality standards, effluent limitations and standards of performance, prohibitions, pre-treatment standards and management practices established pursuant to the Clean Water Act (33 U.S.C. 1344) and applicable State and local law. If the proposed activity involves the discharge of dredged or fill material in waters of the United States, prior to the commencement of any work, the applicant will satisfy the North Carolina Division of Water Quality (NCDWQ) regarding the need for a Water Quality Certification pursuant to Section 401 of the Clean Water Act.

b. There will be no unreasonable interference with navigation or the right of the public to riparian access by the existence or use of activities authorized by this general permit.

c. A permittee, upon receipt of written notice from the Wilmington District Engineer of failure to comply with the terms or conditions of this general permit, will, within 60 days, without expense to the U.S. Government, and in such manner as the Wilmington District Engineer may direct, affect compliance with the terms and conditions or return the worksite to a pre-work condition.

d. The permittee must make every reasonable effort to perform the work authorized herein in a manner so as to minimize any adverse impact on fish, wildlife and natural environmental values.

e. The permittee must perform the work authorized herein in a manner so as to minimize any degradation of water quality. The activity will be conducted in such a manner as to prevent a significant increase in turbidity outside the area of construction or construction-related discharge. Increases such that the turbidity in the water body is 50 NTU's or less in all rivers not designated as trout waters by the North Carolina Division of Environmental Management (NCDEM), 25 NTU's or less in all saltwater classes and in all lakes and reservoirs, and 10 NTU's or less in trout waters, are not considered significant.

f. The permittee will permit the Wilmington District Engineer or his representative to make periodic inspections at any time deemed necessary in order to assure that the activity is being performed or maintained in strict accordance with the Special and General Conditions of this permit.

g. This general permit **does not** convey any rights, either in real estate or material, or any exclusive privileges; and it does not authorize any injury to property or invasion of rights or any infringement of Federal, State or local laws or regulations, nor does it obviate the requirement to obtain State or local assent required by law for the activity authorized herein. These may include, but are not necessarily limited to, a Dredge and/or Fill Permit (N.C.G.S. 113-229), a Coastal Area Management Act (CAMA) Permit (N.C.G.S. 113A-118), an Easement to Fill (N.C.G.S. 146-12) and a Water Quality Certification pursuant to Section 401 of the Clean Water Act.

h. Authorization provided by this general permit may be either modified, suspended or revoked in whole or in part if the Wilmington District Engineer, acting on behalf of the Secretary of the Army, determines that such action would be in the best public interest. Unless subject to modification, suspension or revocation, the term of this general permit shall be five years. Any modification, suspension or revocation of this authorization will not be the basis for any claim for damages against the U.S. Government.

i. This general permit does not authorize the interference with any existing or proposed Federal project and the permittee will not be entitled to compensation for damages or injury to the structures or work authorized herein which may be caused by or result from existing or future operations undertaken by the United States in the public interest.

j. This general permit will not be applicable to proposed construction when the Wilmington District Engineer determines that the proposed activity would significantly affect the quality of the human environment and determines that an Environmental Impact Statement (EIS) must be prepared.

k. This general permit will not be applicable to proposed construction when the Wilmington District Engineer determines, after any necessary investigations, that the proposed activity would adversely affect areas which possess historic, cultural, scenic, conservation or recreational values. Application of this exemption applies to:

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

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

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

(4) Endangered or threatened species or habitat of such species as determined by the Secretaries of Interior or Commerce and concerned in accordance with the Endangered Species Act (16 U.S.C. 1531).

l. Permittees are advised that development activities in or near a floodway may be subject to the National Flood Insurance Program which prohibits any development, including fill within a floodway that results in any increase in base flood elevations.

m. At his discretion, the Wilmington District Engineer may determine that this general permit will not be applicable to a specific construction proposal. In such case, the procedure for processing an individual permit in accordance with 33 CFR 325 will be available.

n. The permittee or the permittee's successors will maintain the authorized work in good condition and in conformance with the terms and conditions of the general permit.

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

Terry R. Youngbluth  
Colonel, Corps of Engineers  
District Engineer

State of North Carolina  
Department of Environment,  
Health and Natural Resources  
Division of Water Quality

James B. Hunt, Jr., Governor  
Wayne McDevitt, Secretary  
A. Preston Howard, Jr., P.E., Director



Division of Water Quality  
Environmental Sciences Branch  
4401 Reedy Creek Road  
Raleigh, N.C. 27607  
FAX:(919) 733-9959

Date 1-14-98

FAX TO: <u>Alice Gordon</u>	FAX NUMBER:
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FROM: <u>Bell</u>
PHONE:

NO. OF PAGES INCLUDING THIS SHEET: <u>5</u>
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Environmental Sciences Branch • 4401 Reedy Creek Road  
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Raleigh, North Carolina 27607  
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State of North Carolina  
Department of Environment  
and Natural Resources  
Division of Water Quality

James B. Hunt, Jr., Governor  
Wayne McDevitt, Secretary  
A. Preston Howard, Jr., P.E., Director



January 8, 1998

Mr. Frank Vick  
NC DOT  
PO Box 25201  
Raleigh, NC 27611-5201

Dear Mr. Vick:

Re: Certification Pursuant to Section 401 of the Federal Clean Water Act,  
Proposed US 17 Widening from 0.26 miles northeast of SR 1571 (Scott's Hill Loop  
Road) to 0.37 miles southeast of Whitebridge Road  
WQC Project #970986, COE #199704475, TIP R-2405BA  
Pender County

Attached hereto is a copy of Certification No.3173 issued to NC DOT dated January  
8, 1998.

If we can be of further assistance, do not hesitate to contact us.

Sincerely,

A. Preston Howard, Jr. P.E.

Attachments

970986.wqc

cc: Wilmington District Corps of Engineers  
Corps of Engineers Wilmington Field Office  
Wilmington DWQ Regional Office  
Mr. John Dorney  
Mr. John Parker, Division of Coastal Management  
Central Files

## NORTH CAROLINA 401 WATER QUALITY CERTIFICATION

**THIS CERTIFICATION** is issued in conformity with the requirements of Section 401 Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Division of Water Quality (DWQ) Regulations in 15 NCAC 2H, Section .0500 to NC DOT resulting in 0.77 acres of wetland impact in Pender County pursuant to an application filed on the 10th day of November, 1997 to widen US 17 from 0.26 miles northeast of SR 1571 (Scott's Hill Loop Road)

The application provides adequate assurance that the discharges of fill material into the waters of an unnamed tributary to Futch Creek in conjunction with the proposed development will not result in a violation of applicable Water Quality Standards and discharge guidelines. Therefore, the State of North Carolina certifies that this activity will not violate the applicable portions of Sections 301, 302, 303, 306, 307 of PL 92-500 and PL 95-217 if conducted in accordance with the application and conditions hereinafter set forth.

This approval is only valid for the purpose and design that you submitted in your application, as described in the Public Notice. If you change your project, you must notify us and you may be required to submit a revised application. If total wetland fills for this project (now or in the future) exceed one acre, compensatory mitigation may be required as described in 15A NCAC 2H .0506 (h) (6) and (7). For this approval to be valid, you must follow the conditions listed below. In addition, you should get any other federal, state or local permits before you go ahead with your project including (but not limited to) Sediment and Erosion control, Coastal Stormwater, Non-discharge and Water Supply watershed regulations.

### Condition(s) of Certification:

1. 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" (available from the Division of Land Resources in the DEHNR Regional or Central Offices) shall be utilized to prevent exceedances of the appropriate turbidity water quality standard (50 NTUs in all fresh water streams and rivers not designated as trout waters; 25 NTUs in all lakes and reservoirs, and all saltwater classes; and 10 NTUs in trout waters);
2. All sediment and erosion control measures placed in wetlands or waters shall be removed and the natural grade restored after the Division of Land Resources has released the project;
3. Measures shall be taken to prevent live or fresh concrete from coming into contact with waters of the state until the concrete has hardened;

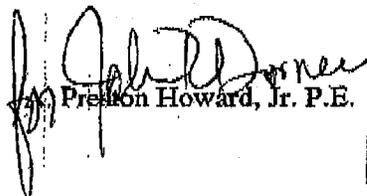
4. Should waste or borrow sites be located in wetlands, compensatory mitigation is required since it is a direct impact from road construction activities;
5. Compensatory mitigation shall be done in accordance with the Corps of Engineers requirements. DWQ shall be copied on the approved ratio, location, size and method of mitigation (restoration, enhancement, creation and preservation) within 30 days after the 404 are issued and annual reports for the entire length of the monitoring period.
6. We understand that you have chosen to contribute to the Wetland Restoration Program in order to compensate for these impacts to wetlands and/or streams. In accordance with 15A NCAC 2H .0506(h). According to 15A NCAC 2H .0506(h), 2.00 acres of restoration will be required. Until the Wetland Restoration Program receives and clears your check in the amount of \$24,000 (made payable to DENR - Wetland Restoration Program), wetland or stream fill shall not occur. Mr. Ron Ferrell should be contacted at 919-733-5083 ext. 358 if you have any questions concerning the Wetland Restoration Program. You have one month from the date of this Certification to make this payment. For accounting purposes, this Certification authorizes the fill of 0.77 acres of non-riparian wetlands in Cape Fear river and subbasin and is required. Please be aware that the Wetland Restoration Program (WRP) rules require rounding of acreage amounts to the nearest one-quarter acre (15A NCAC 2H .0503(b)).

Violations of any condition herein set forth shall result in revocation of this Certification and may result in criminal and/or civil penalties. This Certification shall become null and void unless the above conditions are made conditions of the Federal 404 and/or coastal Area Management Act Permit. This Certification shall expire upon expiration of the 404 or CAMA permit.

If this Certification is unacceptable to you have the right to an adjudicatory hearing upon written request within sixty (60) days following receipt of this Certification. This request must be in the form of a written petition conforming to Chapter 150B of the North Carolina General Statutes and filed with the Office of Administrative Hearings, P.O. Box 27447, Raleigh, N.C. 27611-7447. If modifications are made to an original Certification, you have the right to an adjudicatory hearing on the modifications upon written request within sixty (60) days following receipt of the Certification. Unless such demands are made, this Certification shall be final and binding.

This the 8th day of January 1998

DIVISION OF WATER QUALITY

  
Preston Howard, Jr. P.E.

WQC #3173

