



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

IN REPLY REFER TO

October 24, 1994

Regulatory Branch

Action ID No. 199404858

Mr. B. J. Quinn
NC Department of Transportation
P.O. Box 25201
Raleigh, North Carolina 27611

Dear Mr. Quinn:

On February 11, 1991, we renewed general permit No.198000291 (copy enclosed), which provides Federal authorization for construction activities that receive authorization from the State of North Carolina.

A review of your application received September 27, 1994, for Department of the Army authorization to impact 12.3 acres of wetland habitat and to relocate approximately 3.3 miles of NC 12 in Dare County, four miles south of Oregon Inlet to six miles south of Oregon Inlet, indicates it to be a candidate for Federal authorization under this general permit. Accordingly, the administrative processing of your application will be accomplished by the North Carolina Division of Coastal Management. Comments from Federal review agencies will be furnished to the State.

If your application must be withdrawn from this general permit process for any reason, you will be informed regarding its further management. If there are no unresolved differences in State-Federal positions or policies, the final action taken on your application by the State will result in your receiving written notice from us that your application is consistent with the general permit and you may commence your activity. Only after receiving such confirmation should you begin work.

On February 6, 1990, the DA and the U.S. Environmental Protection Agency (EPA) signed a memorandum of agreement (MOA) establishing procedures to determine the type and level of mitigation necessary to comply with the Clean Water Act Section 404(b)(1) Guidelines. This MOA provides for first, avoiding impacts to waters and wetlands through the selection of the least

damaging, practical alternative; second, taking appropriate and practical steps to minimize impacts on waters and wetlands; and finally, compensating for any remaining unavoidable impacts to the extent appropriate and practical. To enable us to process your application in full compliance with this MOA, we request that you provide the following additional information:

a. Permits for work within wetlands or other special aquatic sites are available only if the proposed work is the least environmentally damaging, practicable alternative. Please furnish information regarding any other alternatives, including upland alternatives, to the work for which you have applied and provide justification that your selected plan is the least damaging to water or wetland areas.

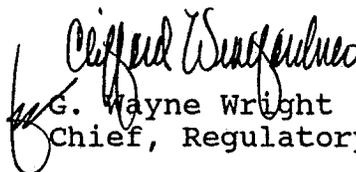
b. It is necessary for you to have taken all appropriate and practical steps to minimize wetland losses. Please indicate all that you have done, especially regarding development and modification of plans and proposed construction techniques, to minimize adverse impacts.

c. The MOA requires that appropriate and practical mitigation will be required for all unavoidable adverse impacts remaining after all appropriate and practical minimization has been employed. Please indicate your plan to mitigate for the projected, unavoidable loss of waters or wetlands or provide information as to the absence of any such appropriate and practical measures.

This information is essential to our expeditious processing of your application and it should be forwarded to us by November 2, 1994. Also, a copy of this information must be sent to the North Carolina Division of Environmental Management to enable them to adequately evaluate your application for a Water Quality Certification pursuant to Section 401 of the Clean Water Act.

Your application, pursuant to Section 10 of the River and Harbor Act and Section 404 of the Clean Water Act, has been assigned Action ID No. 199404858 and will be coordinated by Mr. Mickey Sugg in our Washington Field Office. He is available at telephone (919) 975-3607.

Sincerely,


G. Wayne Wright
Chief, Regulatory Branch

Enclosure

Copies Furnished (without enclosure):

Mr. John Parker
Division of Coastal Management
North Carolina Department of
Environment, Health and
Natural Resources
Post Office Box 27687
Raleigh, North Carolina 27611-7687

Mr. John Dorney
Water Quality Section
Division of Environmental
Management
North Carolina Department of
Environment, Health and
Natural Resources
Post Office Box 29535
Raleigh, North Carolina 27626-0535

Ms. L. K. (Mike) Gantt
U.S. Fish and Wildlife Service
Fish and Wildlife Enhancement
Post Office Box 33726
Raleigh, North Carolina 27636-3726

Mr. Larry Hardy
National Marine Fisheries Service
Habitat Conservation Division
Pivers Island
Beaufort, North Carolina 28516

Mr. Thomas Welborn, Chief
Wetlands Regulatory Section - Region IV
Wetlands, Oceans and Watersheds Branch
U.S. Environmental Protection Agency
345 Courtland Street
Atlanta, Georgia 30365

Mr. David Griffin
Elizabeth City Regional Office
North Carolina Division
of Coastal Management
1367 U.S. Highway 17 South
Elizabeth City, North Carolina 27909

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

General permit No. SAWCO80-N-000-0291
Name of Applicant GENERAL PUBLIC
Effective Date February 11, 1991
Expiration Date February 10, 1996

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 the recommendation of the Chief of Engineers, pursuant to Section 10 of the River and Harbor Act of March 3, 1899 (33 U.S.C. 403) and to Section 404 of the Clean Water Act (33 U.S.C. 1344), is hereby re-issued under authority of the Secretary of the Army by the

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

To authorize those construction activities that receive prior approval from the State of North Carolina in the form of the following authorizations:

1. Coastal Area Management Act (CAMA) Permit.
2. Permit to Dredge and/or Fill.
3. Water Quality Certification (Section 401 of the Clean Water Act).

This general permit applies in Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Hertford, Hyde, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington Counties, North Carolina, U.S. Army Engineer District, Wilmington.

1. Operating Procedures:

a. Applications for State and Federal authorizations will be accepted directly and simultaneously by both the North Carolina Division of Coastal Management (NCDCM) and the Wilmington District, Corps of Engineers (Corps). Receipt of a complete application by the NCDCM will initiate field review to

include a site visit and preparation of an Environmental Consultant's Field Report. Receipt of an application by the Corps will initiate Federal review. Immediately upon receipt by the Corps, an application will be assigned an identification number, acknowledged, and the appropriate Corps Area Coordinator will examine the application to assure that it can be processed pursuant to this general permit. The applicant and the NCDCM will be furnished written notification of the Area Coordinator's determination. Notification to the applicant will include a brief description of the administrative process. For those proposals which may result in a discharge into the waters of the United States, the North Carolina Division of Environmental Management (NCDEM) and the applicant will be informed regarding the applicant's need to obtain a Water Quality Certification in accordance with Section 401 of the Clean Water Act.

b. The NCDCM Environmental Consultant's Field Report will be furnished by the respective NCDCM Regional Offices to the Corps. The Corps will provide copies of this Field Report to the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), and the U.S. Environmental Protection Agency (EPA). Receipt of the Report will initiate the Federal agencies' review. The agencies will be provided sufficient time by the Corps, normally 30 days, before their comments or recommendations, including any recommended modifications or conditions necessary to make the proposal acceptable, must be received by the Corps. Should the agencies not comment within the review period, it will be assumed they offer no objections. Extensions of time will be granted for agency review only if justified by unusual circumstances. If an extension is granted that would delay a NCDCM decision by the date on which an NCDCM decision must be made, the application may be removed from this general permit.

c. The permit review process conducted by the NCDCM is a public process involving public notices in local newspapers, public hearings, and various public appeal procedures. In order to further inform the public, the Corps will distribute, at intervals of approximately two weeks, an additional public notice listing those permit applications received and being considered by NCDCM and the Corps of Engineers under this general permit since the preceding notice. The notice will invite, for a period of not less than 15 days, public comment and/or requests for additional information and for public hearings. All comments will be considered in the overall State/Corps decision on the permit.

d. This general permit does not, in any way, alter established procedures or responsibilities, as required by Federal laws, memoranda of agreement, or administrative regulations with respect to the Corps' coordination with the review agencies. The applicant will continue to have the opportunity to rebut objections to the proposal.

e. After agency comments are received, they will be reviewed by the Corps and a coordinated Federal position will be prepared and furnished to the the NCDCM, Raleigh, within 45 days after receipt of the State Environmental Field Consultant's Report. The coordinated Federal position will include all conditions (including recommendations for denial) recommended by the three Federal agencies listed in paragraph b. (above) unless a changed or omitted condition has the prior written agreement of the affected agency.

f. In those cases where the Corps does not concur with conditions or recommendations of one or more of the three listed Federal agencies, no coordinated Federal position will be furnished to NCDCM until and unless Federal agency agreement has been reached including, if necessary, entering into the referral procedures outlined by current memoranda of agreement between the Army and the respective agencies. The three agencies will be furnished a copy of the coordinated Federal position at the time they are furnished to NCDCM.

g. If the conditions (including recommendations for denial) from the review agencies are unacceptable to the NCDCM, the NCDCM will contact the Corps within 10 days of receipt of the Federal position to resolve the conflict. If resolution of the conflict involves changes to the conditions or recommendations provided by the Federal agencies, the provisions of paragraphs e. and f. (above) will apply, including the procedures of the memoranda of agreement, if appropriate. If the conflict is resolved to the satisfaction of the Corps and other affected review agencies, the NCDCM permit will be issued and the authority of the general permit will apply.

h. If the conflict is not resolved within the time necessary for a decision by NCDCM, NCDCM may proceed, independently, to conclude the State action without inclusion of the Federal position. In this case, the applicant and the NCDCM will be notified immediately in writing that the State permit does not satisfy the Federal permit requirements and that the project in question may not proceed in the absence of Federal authorization.

i. If the coordinated Federal position is not in conflict with State agency positions, law, regulation, or policy and is otherwise acceptable to the NCDCM, a State permit will be developed by the NCDCM fully incorporating the State and Federal positions. Copies of the permit will be furnished to the applicant and the Corps. When required, a copy of the Section 401 Water Quality Certification will be furnished to the applicant and the Corps. Issuance of both the NCDCM permit and the NCDEM 401 Certification, if required, must precede validation of this general permit by the District Engineer or his representative.

j. If the NCDCM permit or Section 401 Water Quality Certification is denied, the applicant will be informed that Federal authorization is also denied.

k. Following issuance of a NCDCM permit, the project will be monitored by NCDCM personnel and inspected for compliance in accordance with normal NCDCM regulations and procedures. Monitoring and periodic evaluation will also be conducted by Corps personnel. If at any time a violation of the NCDCM permit is discovered which would also have been a violation of the Federal position, enforcement action may be taken by both the NCDCM and the Corps in accordance with their respective regulations and policies.

2. General Considerations:

a. All activities identified and authorized by this general permit must be consistent with the terms and conditions of this authorization. Any activity accomplished, but not specifically identified and authorized herein, may constitute a violation of Federal statute and result in legal proceedings as may be considered appropriate by the United States Government.

b. All activities authorized by this general permit which involve the placement of dredged or fill material in waters of the United States or ocean waters shall be consistent with the water quality standards and management practices established pursuant to the Clean Water Act (33 U.S.C. 1344), the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1413), and applicable State and local law. To assure preservation of water quality, before any work is authorized by this general permit, a property owner, if required to do so, must apply for and obtain a Water Quality Certification from the NCDEM in accordance with Section 401 of the Clean Water Act.

c. This general permit does not authorize any activity which might affect a threatened or endangered species as identified by the Endangered Species Act (16 U.S.C. 1531) or adversely modify critical habitat of such species without consultation with the USFWS.

d. When using this general permit, a property owner must make every reasonable effort to prosecute the work in a manner so as to minimize any adverse impact of the work on fish, wildlife and natural environmental values.

e. When using this general permit, a property owner must prosecute the work in a manner so as to minimize any degradation of water quality.

f. A permittee will allow the District Engineer or his representative to make periodic inspections at any time deemed necessary in order to assure that the activity is being performed in strict accordance with the terms and conditions of this general permit.

g. The property owner will maintain any structure authorized by this general permit in good condition and in accordance with approved plans and drawings.

h. 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 any other Federal, State, or local assent required by law for the activity.

i. Authorization provided by this general permit may be modified, suspended, or revoked in whole or in part if the District Engineer, acting on behalf of the Secretary of the Army, determines that such action would be in the best public interest. Modification, suspension, or revocation may occur as a result of the evaluation of the permitted activities and their individual or cumulative adverse impacts. Unless subject to modification, suspension, or revocation, the term of this general permit will be 5 years. Any modification, suspension, or revocation of authorization will not be the basis for any claim against the U.S. Government.

j. If subsequent to performance of the work, should any information or data furnished by the applicant prove to be false, incomplete, or inaccurate, the authorization may be modified, suspended, or revoked in whole or in part, and the U.S. Government may institute appropriate legal proceedings.

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

l. A property owner, upon receipt of written notice from the District Engineer of failure to comply with the terms and conditions of this general permit will, within 60 days, without expense to the U.S. Government and in such manner as the District Engineer may direct, effect compliance with the terms and conditions or return the worksite to prework conditions.

m. This general permit does not apply to activities that would adversely affect an area listed in the National Register of Historic Places or an area which the Secretary of the Interior through the keeper of the National Register of Historic Places would determine eligible for inclusion in the Register. Proposals under this general permit will be furnished by NCDCM to the State Historic Preservation Officer for his comments prior to final permit activity authorization. Also, this general permit does not apply to activities proposed to be located on wild and scenic rivers established pursuant to the Wild and Scenic Rivers Act (16 U.S.C. 1278).

n. 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 damage 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.

o. Any work performed in any area under the regulatory jurisdiction of the Corps which does not comply with the terms and conditions of this general permit must have prior approval under the customary regulations administered by the Corps as found in 33 CFR 320-329.

3. Conditions and Procedures:

a. General. The aforementioned, detailed Operational Procedures apply to construction activities that, prior to issuance of this general permit, required State authorization in the form of a Coastal Area Management Act (CAMA) permit for major development and/or a permit to excavate and/or fill and Federal authorization as required by Section 10 of the River and Harbor Act (33 U.S.C. 403) and/or Section 404 of the Clean Water Act (33 CFR U.S.C. 1344).

b. Application. Any member of the general public proposing to accomplish construction activities under the authorization of this general permit must submit an appropriate, complete application with drawings to the Wilmington District Engineer and the appropriate regional office of the NCDCM.

c. Validation. No work may proceed under this general permit until and unless the District Engineer or his representative provides written validation that the procedures and conditions of the general permit have been satisfied.

4. Exemptions:

a. This general permit will not be applicable to proposed construction when the District Engineer believes that authorization may be warranted but that the proposed activity would significantly affect the quality of the human environment.

b. This general permit will not be applicable to proposed construction when the District Engineer determines, after any necessary investigations, that the proposed activity would adversely affect areas which possess historical, 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 archaeological sites listed in or eligible for inclusion in the National Register of Historical Places as defined in the

National Historic Preservation Act of 1966 and its codified regulations and in the National Historic Preservation Amendments Act of 1980.

(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 conserved in accordance with the Endangered Species Act (16 U.S.C. 1531).

c. At his discretion, at any time during the processing cycle, the 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 may be initiated.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

/s/
THOMAS C. SUERMANN
LTC, Corps of Engineers
District Engineer

State of North Carolina
Department of Environment,
Health and Natural Resources
Division of Environmental Management

James B. Hunt, Jr., Governor
Jonathan B. Howes, Secretary
A. Preston Howard, Jr., P.E., Director



November 28, 1994

Mr. Barney O'Quinn
Planning and Environmental Branch
NC DOT
P.O. Box 25201
Raleigh, N.C. 27611-5201

Dear Mr. O'Quinn:

Subject: Certification Pursuant to Section 401 of the Federal
Clean Water Act,
Proposed NC 12 relocation along Pea Island NWR
Project # 94906, COE # 199404858
Dare County

Attached hereto is a copy of Certification No. 2948 issued to N. C. Department of
Transportation dated 28 November 1994.

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

Sincerely,

A. Preston Howard, Jr. P.E.

Attachments
wqc2948

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

NORTH CAROLINA
Dare County

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 Environmental Management Regulations in 15 NCAC 2H, Section .0500 to N.C. Department of Transportation resulting in 12.3 acres of wetland impact in Dare County pursuant to an application filed on the 24th day of October of 1994 to relocate NC 12 along Pea Island NWR.

The Application provides adequate assurance that the discharge of fill material into the waters of Pamlico Sound in conjunction with the proposed development in Dare County 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 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.

Condition(s) of Certification:

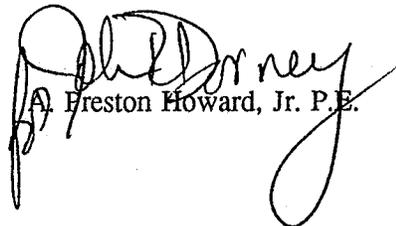
1. That the activity be conducted in such a manner as to prevent significant increase in turbidity outside the area of construction or construction related discharge (50 NTUs in streams and rivers not designated as trout waters by DEM; 25 NTUs in all saltwater classes, and all lakes and reservoirs; 10 NTUs in trout waters).
2. DEM shall be copied on all monitoring reports for wetland mitigation.

Violations of any condition herein set forth shall result in revocation of this Certification. 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, you have the right to an adjudicatory hearing upon written request within thirty (30) 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. Unless such demands are made, this Certification shall be final and binding.

This the 28th day of November, 1994.

DIVISION OF ENVIRONMENTAL MANAGEMENT


A. Preston Howard, Jr. P.E.

WQC# 2948