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

General Permit No. 198000291
Name of Permittee: General Public
Effective Date: January 01, 2005
Expiration Date: December 31, 2010

DEPARTMENT OF THE ARMY
GENERAL PERMIT

A general permit to do 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 (U.S.C. 403), and Section 404 of the Clean Water Act (33 U.S.C. 1344), is hereby issued by authority of the Secretary of the Army by

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

TO AUTHORIZE THOSE CONSTRUCTION ACTIVITIES IN THE 20 COASTAL COUNTIES RECEIVING PRIOR APPROVAL FROM THE STATE OF NORTH CAROLINA IN THE FORM OF A COASTAL AREA MANAGEMENT ACT (CAMA) PERMIT, AND/OR A STATE DREDGE AND FILL PERMIT, AND IF REQUIRED, A WATER QUALITY CERTIFICATION, THAT ARE OTHERWISE NOT ELIGIBLE FOR FEDERAL AUTHORIZATION IN THE FORM OF A NATIONWIDE PERMIT OR ANOTHER REGIONAL GENERAL PERMIT.

1. Operating Procedures:

a. Applications for joint state and federal authorization under this programmatic general permit will be accepted through the North Carolina Division of Coastal Management (NCDCM). Receipt of a complete application by the NCDCM will initiate the State's field review that will include a site visit and preparation of a Field Investigation Report and a state Bio-Report. The NCDCM will forward a copy of the complete application, its Field Investigation Report and its Bio-Report, to the appropriate Corps of Engineers field office, thereby initiating federal review of the project. The Corps, upon receipt of an application, will immediately assign an action identification number, acknowledge receipt thereof, and examine

the application to assure that it can be processed pursuant to this programmatic general permit. The applicant and the NCDCM will be furnished written notification of the Corps' determination. Notification to the applicant will include a brief description of the administrative process.

b. For those proposals that may result in a discharge into waters of the United States, including wetlands, the North Carolina Division of Water Quality (NCDWQ) 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.

c. If, at any time, the Corps determines that a proposed activity is eligible for authorization under another regional general permit (RGP) or a nationwide permit (NWP), this procedure may be terminated and the activity authorized pursuant to the terms and conditions of the appropriate RGP or NWP.

d. The permit review process conducted by the NCDCM is a public process involving publication of public notices in local newspapers, public hearings, and various public appeal procedures. The Corps may issue a separate public notice for a specific proposal if it is deemed necessary for compliance with appropriate laws, regulation and guidance.

e. This general permit does not, in any way, alter established procedures or responsibilities, as required by federal laws, memoranda of agreements (MOA's) or administrative regulations, with respect to the Corps' coordination with appropriate review agencies. The applicant will continue to have the opportunity to rebut any objections to a proposal.

f. The Corps will provide copies of the application and plans, the NCDCM's Field Investigation Report, and the state Bio-Report, to the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS) the U.S. Environmental Protection Agency (EPA), and any other federal agency that the Corps determines to be a necessary review agency (collectively, the "Federal Agencies"). Receipt of this material will initiate the Federal Agencies' review. The Federal Agencies will be allowed sufficient time, normally thirty (30) days, to provide the Corps with their comments and recommendations, including any proposed permit special conditions and recommendations of denial. The Corps may grant extensions of time for Federal Agency review if justified by unusual circumstances. If an extension is granted that would substantially delay an NCDCM decision, the application may be removed from this general permit process.

g. The Corps will receive and review all Federal Agency comments as well as any applicant rebuttal. Provided all Federal Agencies and the Corps are in agreement, the Corps will prepare a coordinated federal position incorporating all Federal Agency comments, including proposed permit special conditions and any recommendations for denial. The Corps will typically furnish this coordinated federal position to the NCDCM within 45 days of its receipt of the complete application, and copies of the Field Investigation Report and Bio-Report.

h. If the Corps does not concur with a Federal Agency's comments or recommendations, the Corps will contact the Federal Agency and advise it of the Corps' position. Attempts to resolve the issue may include initiating the referral procedures outlined by current memoranda of agreement (MOA's) between the Department of the Army and the agency. No coordinated federal position will be furnished to the NCDCM until and unless the Corps receives written agreement from the Federal Agency that all issues have been resolved to the satisfaction of that agency.

i. If any of the recommendations and/or conditions included in the coordinated federal position are unacceptable to the NCDCM, the NCDCM will contact the Corps within ten (10) days of receipt of the coordinated federal position and attempt 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 g. and h. (above) will apply. If the conflict is resolved to the satisfaction of the Corps and any affected Federal Agency, the NCDCM permit will be issued and the authority of this general permit will apply.

j. If a Federal Agency conflict is not resolved within the time necessary for a decision by the NCDCM, the NCDCM may proceed, independently, to conclude the state action without inclusion of the federal position. In such 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 proposal in question may not proceed without federal authorization.

k. If the coordinated federal position is not in conflict with state agencies' positions, law, regulation, or policy, and is acceptable to the NCDCM, a state permit will be developed by the NCDCM fully incorporating the state and federal positions. The NCDCM will furnish copies of the final permit to the applicant and the Corps. The NCDWQ will furnish a copy of the Section 401 Water Quality Certification, if required, to the applicant and the Corps. The Corps will not confirm the authorization of a proposed project under this General Permit until the issuance of the NCDCM permit and, if required, the Section 401 Water Quality Certification.

l. If the NCDCM permit or Section 401 Water Quality Certification is denied, the applicant will be informed that federal authorization is denied without prejudice.

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

n. The NCDCM and the Corps will monitor all permitted work and periodically inspect projects for compliance with permit conditions and applicable state and federal regulations. If any violation of the NCDCM permit is discovered which would also constitute a violation of the federal position, both the NCDCM and the Corps, in accordance with their respective regulations and policies, may take enforcement action.

o. This general permit will not be used to authorize an activity when the District

Engineer determines that the proposed activity would significantly affect the quality of the human environment and therefore require preparation of an Environmental Impact Statement (EIS).

General Conditions.

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

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

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

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

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

f. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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

the affected water of the United States to its former conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Historic, cultural or archeological sites listed in or eligible for

inclusion in the National Register of Historic Places as defined in the National Historic Preservation Act of 1966 and its codified regulations, the National Historic Preservation Amendment Acts of 1980 and 1992, the Abandoned Shipwreck Act of 1987 and the Native American Graves Protection and Repatriation Act.

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

(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).

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

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

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

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

Charles R. Alexander, Jr.
Colonel, U.S. Army
District Engineer