

LOCAL COOPERATION AGREEMENT
BETWEEN
THE DEPARTMENT OF THE ARMY
AND
THE TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA
FOR BEACH EROSION CONTROL AND HURRICANE PROTECTION
AT
WRIGHTSVILLE BEACH, NORTH CAROLINA

THIS AGREEMENT, entered into this 27 day of June, 1990, by and between the DEPARTMENT OF THE ARMY (hereinafter referred to as the "Government"), acting by and through the Assistant Secretary of the Army (Civil Works), and the TOWN OF WRIGHTSVILLE BEACH, NORTH CAROLINA, (hereinafter referred to as the "Town") acting by and through the Town Board of Aldermen, Town of Wrightsville Beach, North Carolina.

WITNESSETH THAT:

WHEREAS, the Wrightsville Beach Erosion Control and Hurricane Protection Project was authorized by Public Law 87 - 874; and,

WHEREAS, the Water Resources Development Act of 1986, Public Law 99 - 662, authorized the Government to participate in continued beach renourishment at Wrightsville Beach for the life of the Project, provided an appropriate non-Federal interest agrees to provide the items of local cooperation required for the Project; and,

WHEREAS, the Government and the Town proposes to perform beach renourishment at Wrightsville Beach on a recurring basis as further provided in this Agreement; and,

WHEREAS, a report entitled "Wrightsville Beach, North Carolina Renourishment Report and Supplement to the Environmental Assessment and Finding of No Significant Impact," prepared by the U.S. Army Engineer District, Wilmington, North Carolina, dated September 1989, was approved by the Office of the Chief of Engineers on the 2nd day of May, 1990, (hereinafter referred to as the "Renourishment Report"); and,

WHEREAS, Section 103 of the Water Resources Development Act of 1986, Public Law 99 - 662, specifies the cost-sharing requirements applicable to the Project; and,

WHEREAS, Section 221 of the Flood Control Act of 1970, Public Law 91 - 611, as amended, provides that the construction of any water resources Project by the Secretary of the Army shall

not be commenced until each non-Federal interest has entered into a written agreement to furnish its required cooperation for the Project; and,

WHEREAS, the Town of Wrightsville Beach has the authority and capability to furnish the cooperation hereinafter set forth and is willing to participate in Project cost-sharing and financing in accordance with the terms of this Agreement.

NOW THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

For purposes of this Agreement:

1. The term "Project" shall mean the placement of sand on the beach at such intervals of time during the 50-year economic life as is determined appropriate by the Government in cooperation with the Town. Periodic beach renourishment will be based on placement of approximately 580,000 cubic yards of sand in a 14,000-foot beach fill as generally described in the Wrightsville Beach Renourishment Report dated September 1989 and approved May 1990. Periodic beach renourishment is estimated to be undertaken every four years unless, based on information gathered during the beach monitoring program, the Government and the Town determine that such beach nourishment is engineeringly necessary and economically justified on a different schedule.

2. The term "total Project costs" shall mean all costs incurred by the Town and the Government directly related to implementation of the Project. Such costs shall include, but not necessarily be limited to, actual construction costs, costs of applicable engineering and design; continuing planning and engineering costs incurred after October 1, 1985, supervision and administration costs, costs of Project construction contract dispute settlements or awards, and the value of lands, easements, rights-of-way, relocations, and dredged material disposal area provided for the Project by the Town, but shall not include any costs for betterments or operation and maintenance.

3. The term "period of renourishment" shall mean the time from the advertisement of the contract for each renourishment to the time of acceptance of the work thereunder by the Contracting Officer.

4. The term "Contracting Officer" shall mean the District Engineer, U.S. Army Engineer District, Wilmington, North Carolina or his designee.

5. The term "highway" shall mean any highway, thoroughfare, roadway, street, or other public or private road or way.

6. The term "relocations" shall mean alterations, modifications, lowering or raising in place, and/or new construction related to, but not limited to, existing railroads, highways, bridges, railroad bridges, and approaches thereto, buildings, commercial and gas pipelines, public utilities (such as municipal water and sanitary sewer lines, telephone lines, and storm drains), aerial utilities, cemeteries, and other facilities, structures, and improvements determined by the Government to be necessary for the construction, operation, and maintenance of the Project.

7. The term "fiscal year" shall mean one fiscal year of the United States Government, unless otherwise specifically indicated. The Government fiscal year begins October 1st and ends September 30th.

8. The term "involuntary acquisition" shall mean the acquisition of lands, easements, and rights-of-way by eminent domain.

9. The term "betterments" shall mean construction of any additional features desired by the Town which are not authorized as part of the Federal project. The construction cost of such items and their operation and maintenance costs shall not be considered a cost of the Project and shall be borne entirely by the Local Sponsor.

ARTICLE II - OBLIGATIONS OF THE PARTIES

a. The Government, subject to and using funds provided by the Town and appropriated by Congress, shall expeditiously implement the Project (including relocations of railroad bridges and approaches thereto) applying those procedures usually followed or applied in Federal projects, pursuant to Federal laws, regulations, and policies. To the extent possible, the Town shall be afforded the opportunity to review and comment on all contracts, including relevant plans and specifications prior to the issuance of invitations for bids. To the extent possible, the Town will be afforded the opportunity to review and comment on all modifications and change orders prior to the issuance to the contractor of a Notice to Proceed. The Government will consider the comments of the Town, but award of the contracts, modifications, or change orders, and performance of all work (whether the work is performed under contract or by Government

personnel) shall be exclusively within the control of the Government.

b. As further specified in Article III hereof, the Town shall provide all lands, easements, rights-of-way, and suitable borrow or dredged material disposal areas, and perform all relocations (excluding railroad bridges and approaches thereto) determined by the Government to be necessary for construction of the Project.

c. As further specified in Article VI hereof, The Town shall contribute, in cash, 35 percent of the total Project cost of each periodic renourishment. Such contributions shall be made prior to the award of any contract for each beach renourishment.

d. No less than once each year, the Town shall inform affected interests of the limitation of the protection afforded by the Project.

e. The Town will assure that water pollution which would endanger the health of bathers will not be permitted to the extent of its powers.

f. The Town shall assure the continued public ownership of the shore and its administration for public use during the 50 year economic life of the Project.

g. The Town shall, to the extent of its powers, prescribe and enforce regulations to prevent obstruction of or encroachment on the Project that would reduce the level of protection it affords or that would hinder operation or maintenance.

h. No Federal funds may be used to meet the Town's share of Project costs under this Agreement unless the expenditure of such funds is expressly authorized by statute as verified in writing by the granting agency.

i. The Town shall provide and maintain necessary access roads, parking areas and other public use facilities open and available to all on equal terms.

ARTICLE III - LANDS, FACILITIES, AND PUBLIC LAW 91 - 646
RELOCATION ASSISTANCE

a. The Town shall furnish to the Government all lands, easements, and rights-of-way, including suitable borrow and dredged material disposal areas, as may be determined by the

Government to be necessary for periodic renourishment and shall furnish the Government evidence supporting the Town's legal authority to grant rights-of-entry to such lands. The necessary lands, easements, and rights-of-way determined by the Government to be necessary for work to be performed for periodic beach renourishment must be furnished prior to the advertisement of any contract for beach renourishment.

b. The Town shall provide or pay to the Government the full costs of providing all retaining dikes, wasteweirs, bulkheads, and embankments, including all monitoring features and stilling basins that may be required at any dredged material disposal areas necessary for each period of renourishment.

c. Upon notification from the Government, the Town shall accomplish or arrange for accomplishment, at no cost to the Government, all alterations and relocations (excluding railroad bridges and approaches thereto) determined by the Government to be necessary for each period of renourishment.

d. The Town shall comply with the applicable provisions of the Uniform Relocations Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91 - 646, as amended by Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100 - 17, and the Uniform Regulations contained in 49 CFR Part 24, in acquiring lands, easements, and rights-of-way for each period of renourishment and subsequent operation and maintenance thereof, and inform all affected persons of applicable benefits, policies, and procedures in connection with said Act.

ARTICLE IV - VALUATION OF LANDS AND FACILITIES

a. The value of the lands, easements, and rights-of-way to be included in Project cost-sharing and credited toward the Town's share of said costs will be determined in accordance with the following procedures:

1. If the lands, easements, and rights-of-way are owned by the Town as of the date of the first construction contract for the project is awarded, the credit shall be the fair market value of the interest at the time of such award. The fair market value shall be determined by an appraisal, to be obtained by the Town, and prepared by a qualified appraiser who is acceptable to the Town and the Government. The appraisal shall be reviewed and approved by the Government.

2. If the lands, easements, or rights-of-way are to be acquired by the Town after the date of award of the first construction contract, the credit shall be the fair market value of the interest at time such interest is acquired. The fair market value shall be determined as specified in subparagraph 1. above. If the Town pays an amount in excess of the appraised fair market value, it may be entitled to a credit for the excess if the Town has secured prior written approval from the Government of its offer to purchase such interest.

3. Credit for lands, easements, and rights-of-way required, in the case of involuntary acquisitions which occur within a one-year period preceding the date this Agreement is signed or which occur after the date this Agreement is signed will be based on court awards, or on stipulated settlements that have received prior Government approval.

4. If the Town acquires more lands, easements, or rights-of-way than are necessary for Project purposes, as determined by the Government, then only the value of such portions of those acquisitions as are necessary for Project purposes shall be included in total Project costs and credited toward the Town's share.

5. For lands, easements, or rights-of-way acquired by the Town for a five year period preceding the date this Agreement is signed, or any time after this Agreement is signed, credits provided under this paragraph will also include the actual incidental costs of acquiring the interest, e.g., closing and title costs, appraisal costs, survey costs, attorney's fees, plat maps, and mapping costs, as well as the actual amounts expended for payment of any Public Law 91 - 646 relocation assistance benefits provided in accordance with the obligations under this Agreement.

b. The costs of relocations which will be included in the portions of the Project subject to cost-sharing and credited toward the Town's share shall be that portion of actual costs incurred by the Town as set forth below, and approved by the Government:

1. Highways and Highway Bridges: Only the portion of the cost as would be necessary to construct substitute bridges and highways to the design standard the State of North Carolina would use in constructing a new bridge or highway under similar conditions of geography and traffic loads.

2. Utilities and Facilities (including

railroads): Actual relocation costs, less depreciation, less salvage value, plus the cost of removal, less the cost of betterments. With respect to betterments, new materials shall not be used in any relocation or alteration if material of value and usability equal to those in the existing facility are available or can be obtained as salvage from the existing facility or otherwise, unless the provision of new material is more economical. If, despite the availability of used material, new material is used, where the use of such new material represents an additional cost, such cost will not be included in total Project costs.

ARTICLE V - CONSTRUCTION PHASING AND MANAGEMENT

a. To provide for consistent and effective communication between the Town and the Government during each period of renourishment, each shall appoint representatives to coordinate on scheduling, plans, specifications, modifications, contract costs, and other matters relating to each period of renourishment. The Town will be informed of any changes in cost estimates.

b. The representatives appointed above shall meet as necessary during each period of renourishment and shall make such recommendations as they deem warranted to the Contracting Officer.

c. The Contracting Officer shall consider the recommendations of the representatives in all matters relating to the Project, but the Contracting Officer, having ultimate responsibility for each period of renourishment, has complete discretion to accept, reject, or modify the recommendations.

ARTICLE VI - METHOD OF PAYMENT

a. The Town shall provide, during each period of renourishment, the amount required under Article II of this Agreement. The total cost of the first period of renourishment is presently estimated to be \$1,305,000. In order to meet its share, of the cost of the initial period of renourishment, the Town must provide a total cash contribution presently estimated to be \$457,000. The dollar amounts set forth in this Article are based on the Government's best estimates which will reflect projection of costs, price level changes, and anticipated inflation. Such cost estimates are subject to adjustments based on costs actually incurred for the initial period of renourishment and are not to be construed as the total financial responsibilities of the Government and the Town.

b. The Town shall provide its required cash contribution in proportion to the rate of Federal expenditures over each period of renourishment in accordance with the following provisions:

1. For purposes of budget planning, the Government shall notify the Town by August 1st of each year of the estimated funds that will be required from the Town to meet its share of costs of renourishment for the upcoming fiscal year.

2. No later than sixty (60) days prior to the award of each renourishment contract, the Government shall notify the Town of its share of the cost of said renourishment, including costs attributable to the Project incurred prior to the initiation of said renourishment, for the first fiscal year of each renourishment. No later than thirty (30) days thereafter, the Town shall provide the Government the full amount of the required contribution by delivering a check payable to "FAO, USAED, Wilmington" to the Contracting Officer representing the Government.

3. For any subsequent fiscal years of each period of renourishment, the Government shall, no later than sixty (60) days prior to the beginning of the fiscal year, notify the Town of its share of the cost of the renourishment for that fiscal year. No later than thirty (30) days prior to the beginning of the fiscal year, the Town shall make the necessary funds available to the Government through the funding mechanism specified above. As implementation of the Project proceeds, the Government shall adjust the amounts required to be provided under this paragraph to reflect actual costs of each period of renourishment.

4. If at any time during each period of each renourishment, the Government determines additional funds will be needed from the Town, the Government shall so notify the Town and the Town, no later than forty-five (45) days from receipt of notice, shall make the necessary funds available through the funding mechanism specified above.

c. The Government will draw on the funds provided by the Town such sums as the Government deems necessary to cover contractual and in-house obligations attributable to the Project as they are incurred as well as costs incurred by the Government prior to the initiation of construction.

d. Upon completion of each period of renourishment and resolution of all relevant contract claims and appeals, the

Government shall compute the total costs of said renourishment and tender to the Town a final accounting of its share of said costs. In the event the total contribution for each period of renourishment by the Town is less than its required share of the cost of the said renourishment, the Town shall, no later than ninety (90) calendar days after receipt of written notice, make a cash payment to the Government of whatever sum is required. In the event the Town has made contributions in excess of its required share of the cost of said renourishment, the Government shall, no later than ninety (90) days after the final accounting is complete, subject to the availability of appropriations, return said excess to the Town.

ARTICLE VII - DISPUTES

Before any party to this Agreement may bring suit in any court concerning an issue relating to this Agreement, such party must first seek in good faith to resolve the issue through negotiation or other forms of nonbinding alternative dispute resolution mutually acceptable to the parties.

ARTICLE VIII - OPERATION AND MAINTENANCE

a. Between each period of renourishment, the Town shall operate and maintain the project in accordance with regulations or directions prescribed by the Government.

b. The Town hereby gives the Government the right to enter, at reasonable times and in a reasonable manner, upon land which it owns or controls for access to the Project for the purpose of inspection, and if necessary, for the purpose of completing, operating or maintaining the Project. If an inspection shows the Town for any reason is failing to fulfill its obligations under this Agreement without receiving prior written approval from the Government, the Government will send a written notice to the Town. If the Town persists in such failure for thirty (30) calendar days after receipt of the notice, then the Government shall have the right to enter, at reasonable times and in a reasonable manner, upon the lands the Town owns or controls for access to the Project for the purpose of completing, operating or maintaining the Project. No completion, operation or maintenance by the Government shall operate to relieve the Town of its responsibility to meet its obligations as set forth in this Agreement, or to preclude the Government from pursuing any other remedy at law or equity to assure faithful performance pursuant to this Agreement.

ARTICLE IX - RELEASE OF CLAIMS

The Town shall hold and save the Government free from all damages arising from the construction, operation, and maintenance of the Project, except for damages due to the fault or negligence of the Government or its contractors.

ARTICLE X - MAINTENANCE OF RECORDS

The Government and the Town shall keep books, records, documents, and other evidence pertaining to costs and expenses incurred pursuant to this Agreement to the extent and in such detail as will properly reflect total Project costs. The Government and the Town shall maintain such books, records, documents, and other evidence for a minimum of three (3) years after completion of each period of renourishment, and resolution of all claims arising therefrom, and shall make available at their offices, at reasonable times, such books, records, documents, and other evidence for inspection and audit by authorized representatives of the parties to this Agreement.

ARTICLE XI - GOVERNMENT AUDIT

The Government shall conduct an audit, when appropriate, of the Town's records for the Project to ascertain the allowability, reasonableness, and allocability of its costs for inclusion as credit against the non-Federal share of Project costs.

ARTICLE XII - FEDERAL AND STATE LAWS

In acting under its rights and obligations hereunder, the Town agrees to comply with all applicable Federal and state laws and regulations, including Section 601 of Title VI of the Civil Rights Act of 1964, Public Law 88 - 352, and Department of Defense Directive 5500.II issued pursuant thereto and published in 32 CFR Part 300, as well as Army Regulation 600-7 entitled "Nondiscrimination on the Basis of Handicap in Programs and Activities Assisted or Conducted by the Department of the Army."

ARTICLE XIII - RELATIONSHIP OF THE PARTIES

The parties to this Agreement act in an independent capacity in the performance of their respective functions under this Agreement, and neither party is to be considered the officer, agent, or employee of the other.

ARTICLE XIV - OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress or resident

commissioner shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom.

ARTICLE XV - COVENANT AGAINST CONTINGENT FEES

The Town warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Town for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this Agreement without liability, or, in its discretion, add to the Agreement or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

ARTICLE XVI - TERMINATION OR SUSPENSION

a. If at any time the Town fails to make the payments required under this Agreement, the Secretary of the Army shall terminate or suspend work on the Project until the Town is no longer in arrears, unless the Secretary determines that continuation of work on the Project is in the best interest of the United States or is necessary in order to satisfy agreements with any non-Federal interest in connection with the Project. Any delinquent payment shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 percentum of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately prior to the date on which such payment became delinquent, or auctioned immediately prior to the beginning of each additional three month period if the period of delinquency exceeds three months.

b. If the Government fails to receive annual appropriations for the Project in the amounts sufficient to meet Project expenditures for the then-current or upcoming fiscal year, the Government shall so notify the Town. After sixty (60) days, either party may elect, without penalty, to terminate the Agreement or to defer future performance hereunder; however, deferral of future performance under this Agreement shall not affect existing obligations or relieve the parties of liability for any obligations previously incurred. In the event that either party elects to terminate this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting in accordance with Article VI of this Agreement. In the event either party elects to defer future performance under this Agreement pursuant to this

Article, such deferral shall remain in effect until such time as the Government receives sufficient appropriations or until either party elects to terminate this Agreement.

ARTICLE XVII - NOTICES

a. All notices, requests, demands, and other communications required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally, given by prepaid telegram or mailed by first-class (postage prepaid), registered, or certified mail as follows:

If to the Town: Town of Wrightsville Beach
 Post Office Box 626
 Wrightsville Beach, North Carolina 28480

If to the Government: District Engineer
 U.S. Army Engineer District, Wilmington
 Post Office Box 1890
 Wilmington, North Carolina 28402-1890

b. A party may change the address to which such communications are to be directed by giving written notice to the other in the manner provided in this Article.

c. Any notice, request, demand, or other communication made pursuant to this Article shall be deemed to have been received by the addressee at such time as it is personally delivered or on the third business day after it is mailed, as the case may be.

ARTICLE XVIII - CONFIDENTIALITY

To the extent permitted by the law governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

ARTICLE XIX - SECTION 902 PROJECT COST LIMITATIONS

The Town has reviewed the provisions set forth in Section 902 of Public Law 99 - 662, as amended, and understands that Section 902 establishes a maximum construction cost for the Project. For the purposes of this Agreement, the Section 902 cost limit is \$66,199,000 for the 50-year economic life of the project as calculated on May 15, 1990, and includes allowances for future inflation during said renourishment periods based on an estimated placement of 580,000 cubic yards of sand every four

years. These amounts shall be adjusted to allow for appropriate increases for inflation and changes in the Project costs as provided by Section 902. Should this cost maximum be reached, no additional funds may be expended on the Project until additional authority is obtained from Congress.

ARTICLE XX - HAZARDOUS SUBSTANCES

a. After execution of this Agreement and upon direction by the Contracting Officer, the Town shall perform, or cause to be performed, such environmental investigations as are determined necessary by the Government or the Town to identify the existence and extent of any hazardous substances regulated under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 USC 9601-9675, on lands necessary for Project construction, operation, and maintenance. All actual costs incurred by the Town which are properly allowable and allocable to performance of any such environmental investigations shall be included in total Project costs and cost shared as a construction cost in accordance with Section 103 of Public Law 99-662.

b. In the event it is discovered through an environmental investigation or other means that any lands, easements, rights-of-way, or disposal areas to be acquired or provided for the Project contain any hazardous substances regulated under CERCLA, the Town and the Government shall provide prompt notice to each other, and the Town shall not proceed with the acquisition of lands, easements, rights-of-way, or disposal areas until mutually agreed.

c. The Government and the Town, shall determine whether to initiate construction of the Project, or if already in construction, to continue with construction of the Project, or to terminate construction of the Project for the convenience of the Government in any case where hazardous substances regulated under CERCLA are found to exist on any lands necessary for the Project. Should the Government and the Town determine to proceed or continue with construction after considering any liability that may arise under CERCLA, as between the Government and the Town, the Town shall be responsible for any and all necessary clean up and response costs, to include the costs of any studies and investigations necessary to determine an appropriate response to the contamination. Such costs shall not be considered a part of total Project costs as defined in this Agreement. In the event the Town fails to provide any funds necessary to pay for clean up and response costs or to otherwise discharge its responsibilities under this paragraph upon direction by the Government, the Government may either terminate or suspend work on the Project or

proceed with further work as provided in Article XVI.

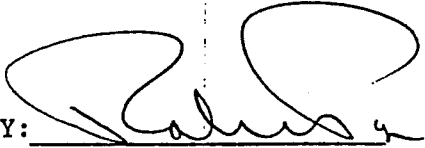
d. The Town and the Government shall consult with each other under the Construction Phasing and Management Article of this Agreement to assure that responsible parties bare any necessary clean up and response costs as defined in CERCLA. Any decision made pursuant to paragraph c of this Article shall not relieve any party from any liability that may arise under CERCLA.

e. The Town shall operate and maintain the Project in a manner so that liability will not arise under CERCLA.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the Assistant Secretary of the Army (Civil Works).

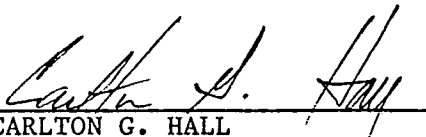
THE DEPARTMENT OF THE ARMY

THE TOWN OF WRIGHTSVILLE BEACH

BY: 

ROBERT W. PAGE

Assistant Secretary of the Army
(Civil Works)

BY: 

CARLTON G. HALL

Mayor

DATE: 6-27-90

DATE: 6/19/90

ATTEST: Linda Oskeew, Town Clerk

DATE: June 19, 1990

CERTIFICATE OF AUTHORITY

I, John C. Wessell, III do hereby certify that I am the Principal Legal Officer for Wrightsville Beach, North Carolina; that the Town of Wrightsville Beach is a legally constituted public body with full authority and capability to perform the terms of the Agreement between the Department of the Army and the Town of Wrightsville Beach in connection with the Wrightsville Beach, North Carolina Shore and Hurricane Wave Protection Project, and to pay damages, if necessary, in event of the failure to perform in accordance with Section 221 of Public Law 91 - 611; and that the person who has executed the contract on behalf of the Town of Wrightsville Beach has acted within his statutory authority.

IN WITNESS WHEREOF, I have made and executed this certificate this 19th day of June, 19 90.



PRINCIPAL LEGAL OFFICER
Wrightsville Beach, North Carolina

CERTIFICATION REGARDING LOBBYING

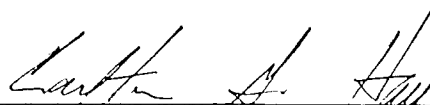
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.



Town of Wrightsville Beach
Carlton G. Hall, Mayor

Wrightsville Beach Shore and Hurricane Wave Protection Project

MILESTONE SCHEDULE

The Wrightsville Beach project was originally authorized by PL 87-874 in 1962. The project was reauthorized by the Water Resources Development Act of 1986 (PL 99-662).

1. Project Management Plan for Feasibility Study approved by PRB. Not Applicable (N/A)
2. FCSA signed. N/A
3. Project Management Plan approved. N/A
4. Date of Feasibility Resolution Conference. N/A
5. Completion of Feasibility Report/Public Notice. N/A
6. Initiation of PED. N/A
7. Filing of FEIS. N/A
8. ROD signed. N/A
9. Report of Chief of Engineers. N/A
10. ASA (cw) transmittal of Report to Congress. N/A
11. Authorization Legislation signed by President 1986 (PL 99-662)
12. Date of Technical Review Conference. N/A
13. Approval of Design Memoranda. "Wrightsville Beach, North Carolina Renourishment Report and Supplement to the Environmental Assessment and Finding of No Significant Impact (EA/FONSI)". Approved. CESAD-EN-C letter dated 18 October 1989.
14. Approval of Plans and Specs. 23 February 1990
15. Approval date, New Construction Start. N/A
16. LCA signed. 11 May 1990
17. Last Required Permit Received. N/A
18. Real Estate Acquisition Completed. N/A

Wrightsville Beach Shore and Hurricane Wave Protection Project

MILESTONE SCHEDULE--Continued

19. Award of Construction Contract. 26 June 1990
20. Completion of Construction. 24 September 1990
21. Acceptance of Project Feature by Partner. N/A
22. Final Acceptance and Transfer to Partner. N/A

TOWN OF WRIGHTSVILLE BEACH

STATEMENT OF FINANCIAL CAPABILITY

AND FINANCING PLAN

BEACH EROSION CONTROL AND HURRICANE PROTECTION PROJECT

WRIGHTSVILLE BEACH, NORTH CAROLINA

STATEMENT OF FINANCIAL CAPABILITY

The Town of Wrightsville Beach (hereinafter referred to as the "the Town"), as non-Federal sponsor of the Beach Erosion Control and Hurricane Protection Project at Wrightsville Beach, N. C., is capable of meeting cost sharing and other obligations as required under the terms of the draft Local Cooperation Agreement. Through use of finance mechanisms that are politically and institutionally plausible, the Town will be prepared to meet the financial obligations of the project's non-Federal sponsors.

FINANCING PLAN

Uses of funds. The Town will be responsible for 35 percent of the total project costs. Included in the Town's share are all lands, easements, rights-of-way, dredged material disposal areas, and relocations (LERRD) determined by the Federal Government to be necessary for construction and maintenance of the project; such LERRD must be furnished to the Federal Government prior to the advertisement of any construction contract. Construction is projected to begin early in calendar year 1990, preferably no later than February 1. The construction period is estimated to be 3 months. The estimated cost of the renourishment assigned to the Wrightsville Beach project is \$1,305,000, of which the Town is responsible for approximately \$457,000 cash, to be paid during construction. Annual expenses to the Town for operation and maintenance of the project (vegetative maintenance of the dune) are estimated to be \$4,900.

Sources of Funds. The Town has requested \$353,000 from the State of North Carolina (hereinafter referred to as "the State"). North Carolina General Statutes 143-215.70 through 215.73 allow the State to participate in beach nourishment projects up to an amount not to exceed 75 percent of the non-Federal share of the cost of the project. Although confirmation of the State's participation in this project cannot be provided at this time, the State does have a long history of strong commitment to similar projects. The State has demonstrated this commitment in its financial assistance in the past to federally initiated and maintained projects at Wrightsville Beach and Carolina Beach. The Town will procure a financial commitment from the State.

The Town has \$80,000 cash available from its general fund. The remainder of the local sponsor's share of the project cost will be requested from the proceeds of the New Hanover County Room Occupancy Tax, 75 percent of which is designated by State law for use in controlling beach erosion. The Town will have \$4,900 available annually from its general fund operating budget for operation and maintenance of the project.

REPORTING OFFICERS ASSESSMENT
OF THE
NON-FEDERAL SPONSOR'S FINANCIAL CAPABILITY

I have assessed the Town of Wrightsville Beach's financial capability and I have ascertained that it is reasonable to expect that ample funds will be available to satisfy the non-Federal sponsor's financial obligation for the project.

TC *T. C. Suermann, Jr.*
THOMAS C. SUERMANN
LTC, Corps of Engineers
Commanding

DETAILED PROJECT SCHEDULE (PB2A)

APPROPRIATION: CONSTRUCTION GENERAL

(000)

RUN DATE: 11JAN90

CLASS: SUB-C - PROJECTS SPECIFICALLY AUTHORIZED BY CONGRESS

LEGEND: P=PLANS & SPECS D=DESIGN MEMO C=AE CONTRACT NO R=REVIEW A=ADVERTISE & AWARD E=EARNINGS --NO EARNINGS H=HIRED LABOR

| ACCT LII | ITEM | PRJ EST NONFED% | COST THRU FY 89 | SCHED EXP | CURRENT FY 90 | | | | SCHED EXP | BUDGET FY 91 | | | | FUTURE FISCAL | | | YEARS FY 95 SCH UNSCH |
|----------|-------------------------------|-----------------|-----------------|-----------|---------------|----|--------------------|-----|-----------|--------------|----|----|----|---------------|-------|-------|-----------------------|
| | | | | | 1Q | 2Q | 3Q | 4Q | | 1Q | 2Q | 3Q | 4Q | FY 92 | FY 93 | FY 94 | |
| 10 | BREAKWATERS AND SEAWALLS | 962 | 962 | | | | | | | | | | | | | | 0 |
| 1010 | INITIAL FILL LS | 962 | 962 | | | | | | | | | | | | | | 0 |
| | MAY70 | | | | | | | | | | | | | | | | 0 |
| 17 | BEACH REPLENISHMENT | 22797 | 1873 | 1127 | | | 627 | 500 | | | | | | | 1110 | | 0 |
| | | | | | | | | | | | | | | | | | 18687 |
| 1710 | COMPL INCREMENTS THRU FY81 LS | 1873 | 1873 | | | | | | | | | | | | | | 0 |
| 1720 | FY 90 INCREMENT LS | 1127 | | 1127 | | | 627 | 500 | | | | | | | | | 0 |
| | APR90 | | | | | | PPPPPPPPPRAAA-EEEE | | | | | | | | | | 0 |
| 1730 | FY 94 INCREMENT LS | 1110 | | | | | | | | | | | | | 1110 | | 0 |
| | JAN94 | | | | | | | | | | | | | PA-EE | | | 0 |
| 1740 | REMAINING INCREMENTSLS | 18687 | | | | | | | | | | | | | | | 0 |
| | | | | | | | | | | | | | | | | | 18687 |
| 30 | ENGINEERING AND DESIGN | 817 | 103 | 73 | 57 | 14 | 2 | | | | | | | | 60 | | 0 |
| | | | | | | | | | | | | | | | | | 581 |
| 3010 | INITIAL CONSTRUCTI | 56 | 56 | | | | | | | | | | | | | | 0 |
| 3020 | FUTURE NOURISHMENT | 761 | 47 | 73 | 57 | 14 | 2 | | | | | | | | 60 | | 0 |
| | | | | | | | | | | | | | | | | | 581 |
| 31 | CONSTRUCTION MANAGEMENT | 676 | 64 | 55 | 9 | 2 | 26 | 18 | | | | | | | 60 | | 0 |
| | | | | | | | | | | | | | | | | | 497 |

DETAILED PROJECT SCHEDULE (PB2A)

APPROPRIATION: CONSTRUCTION GENERAL

(000)

RUN DATE: 11JAN90

CLASS: SUB-C - PROJECTS SPECIFICALLY AUTHORIZED BY CONGRESS

LEGEND: P=PLANS & SPECS D=DESIGN MEMO C=AE CONTRACT NO R=REVIEW A=ADVERTISE & AWARD E=EARNINGS --NO EARNINGS H=HIRED LABOR

| ACCT | LII | ITEM | PRJ EST NONFED% | COST THRU FY 89 | SCHED EXP | CURRENT FY 90 | | | | SCHED EXP | BUDGET FY 91 | | | | FUTURE FISCAL | | | YEARS FY 95 SCH UNSCH |
|------|-----|-----------------------|--------------------|-----------------------|--------------|---------------|----|----|----|--------------|--------------|----|----|----|---------------|-------|-------|--------------------------------|
| | | | | | | 1Q | 2Q | 3Q | 4Q | | 1Q | 2Q | 3Q | 4Q | FY 92 | FY 93 | FY 94 | |
| 3110 | | INITIAL CONSTRUCTI | 40 | 40 | | | | | | | | | | | | | | 0 |
| 3120 | | FUTURE NOURISHMENT | 636 | 24 | 55 | 9 | 2 | 26 | 18 | | | | | | | 60 | | 0 |
| | | | | | | | | | | | | | | | | | | 497 |

EFF DATE
01JAN90

DIV: SOUTH ATLANTIC
DIST: WILMINGTON

PROJECT: WRIGHTSVILLE BEACH, NC
PROJECT NO.: BE939 LEVEL: 0 PGM-LEVEL: 1 CWIS NO: 20220

PAGE 2
LAST ACCESSED: 11JAN90

DETAILED PROJECT SCHEDULE (PB2A)

APPROPRIATION: CONSTRUCTION GENERAL

(000)

RUN DATE: 11JAN90

CLASS: SUB-C - PROJECTS SPECIFICALLY AUTHORIZED BY CONGRESS

LEGEND: P=PLANS & SPECS D=DESIGN MEMO C=AE CONTRACT NO R=REVIEW A=ADVERTISE & AWARD E=EARNINGS --=NO EARNINGS H=HIRED LABOR

| ACCT LII | ITEM | PRJ EST NONFED% | COST THRU FY 89 | SCHED EXP | CURRENT FY 90 | | | | BUDGET FY 91 | | | | FUTURE FISCAL | | | YEARS FY 95 | |
|-------------|------|--------------------|-----------------------|--------------|---------------|----|-----|-----|--------------|----|----|----|---------------|-------|-------|----------------|--------------|
| | | | | | 1Q | 2Q | 3Q | 4Q | SCHED EXP | 1Q | 2Q | 3Q | 4Q | FY 92 | FY 93 | FY 94 | SCH UNSCH |
| TOTAL | | 25252 | 3002 | 1255 | 66 | 16 | 655 | 518 | | | | | | | | 1230 | 0 |
| NON FEDERAL | | 9205 | 1405 | 457 | 24 | 5 | 238 | 190 | | | | | | | | 430 | 0 |
| OTHER COST | | | | | | | | | | | | | | | | | 6913 |
| LANDS | | | | | | | | | | | | | | | | | 0 |
| RELOCATIONS | | | | | | | | | | | | | | | | | 0 |
| OTHER | | | | | | | | | | | | | | | | | 0 |
| CASH | | 9205 | 1405 | 457 | 24 | 5 | 238 | 190 | | | | | | | | 430 | 0 |
| | | | | | | | | | | | | | | | | | 6913 |
| | | | | | | | | | | | | | | | | | 0 |

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DETAILED PROJECT SCHEDULE (PB2A)

APPROPRIATION: CONSTRUCTION GENERAL

(000)

RUN DATE: 11JAN90

CLASS: SUB-C - PROJECTS SPECIFICALLY AUTHORIZED BY CONGRESS

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=====

| ACCT LII | ITEM | PRJ EST NONFED% | COST THRU FY 89 | SCHED EXP | CURRENT FY 90 | | | | BUDGET FY 91 | | | | FUTURE FISCAL | | | YEARS | | | | |
|-------------|---------------------|--------------------|-----------------------|--------------|---------------|----|-----|-----|--------------|----|----|----|---------------|-------|-------|-------|-----------------------|------|---|---|
| | | | | | 1Q | 2Q | 3Q | 4Q | SCHED EXP | 1Q | 2Q | 3Q | 4Q | FY 92 | FY 93 | FY 94 | FY 95 SCH UNSCH | | | |
| | NON FEDERAL | 9205 | 1405 | 457 | 24 | 5 | 238 | 190 | | | | | | | | 430 | 0 | 6913 | 0 | |
| | OTHER COST | | | | | | | | | | | | | | | | | | 0 | 0 |
| | UNDEL ORDERS | | | | | | | | | | | | | | | | | | 0 | 0 |
| | TOTAL OBLIGATIONS | | 1405 | 457 | | | | | | | | | | | | 430 | 0 | 6913 | 0 | |
| | CONTRIBUTIONS | | 1405 | 457 | | | | | | | | | | | | | | | 0 | 0 |
| | UNOBL CARRYOVER | | | | | | | | | | | | | | | | | | 0 | 0 |
| | TOTAL AVAIL FOR OBL | | 1405 | 457 | | | | | | | | | | | | | | | 0 | 0 |
| | CONTRIB REQUIRED | | | | | | | | | | | | | | | 430 | 0 | 6913 | 0 | |

DETAILED PROJECT SCHEDULE (PB2A)

APPROPRIATION: CONSTRUCTION GENERAL

(000)

RUN DATE: 11JAN90

CLASS: SUB-C - PROJECTS SPECIFICALLY AUTHORIZED BY CONGRESS

LEGEND: P=PLANS & SPECS D=DESIGN MEMO C=AE CONTRACT NO R=REVIEW A=ADVERTISE & AWARD E=EARNINGS --NO EARNINGS H=HIRED LABOR

| ACCT LII | ITEM | PRJ EST NONFED% | COST THRU FY 89 | SCHED EXP | CURRENT FY 90 | | | | BUDGET FY 91 | | | | FUTURE FISCAL | | | YEARS FY 95 | | |
|-------------|---------------------------|--------------------|-----------------------|--------------|---------------|----|-----|-----|--------------|----|----|----|---------------|-------|-------|----------------|--------------|------------|
| | | | | | 1Q | 2Q | 3Q | 4Q | SCHED EXP | 1Q | 2Q | 3Q | 4Q | FY 92 | FY 93 | FY 94 | SCH UNSCH | |
| | FEDERAL TOTAL COST SCH | 16047 | 1597 | 798 | 42 | 11 | 417 | 328 | | | | | | | | 800 | 0 | 12852 0 |
| | UNDEL ORDERS | | | | | | | | | | | | | | | | 0 | 0 0 |
| | TOTAL OBLIGATIONS | | 1597 | 798 | | | | | | | | | | | | 800 | 0 | 12852 0 |
| | ALLOCATIONS | | 1597 | 798 | | | | | | | | | | | | | 0 | 0 0 |
| | UNOBL CARRYOVER | | | | | | | | | | | | | | | | 0 | 0 0 |
| | TOTAL AVAIL FOR OBL | | | 798 | | | | | | | | | | | | | 0 | 0 0 |
| | APPROP REQUIRED | | | | | | | | | | | | | | | 800 | 0 | 12852 0 |

90/ REFLECTS \$80 REDUCTION ASSIGNED AS SAVINGS AND SLIPPAGE, \$9 SEQUESTERED IN ACCORDANCE WITH THE GRAMM-RUDMAN-HOLLINGS ACT AND \$57 REPROGRAMMED TO THE PROJECT.

Cost Sharing

Continued Maintenance of Wrightsville Beach

Berm and Dune Project

REEVALUATION STUDY

| | | |
|-------------------|--------------------|----------------|
| Total First Costs | \$1,305,000 | |
| | <u>Non-Federal</u> | |
| 35 percent | | \$ 457,000 |
| | <u>Federal</u> | |
| 65 percent | | <u>848,000</u> |
| TOTAL | | \$1,305,000 |

EC 1105-2-180
24 Jan 88

SCHEDULE OF SOURCES AND USES OF FUNDS

FUNDS AVAILABLE FROM LOCAL SPONSOR

| | <u>Begin Balance</u> <u>Plus Annual Income</u> | <u>Required Annual</u> <u>Contribution</u> | <u>Fund</u> <u>Balance</u> |
|---------------------------------|---|---|-------------------------------|
| Balance on hand const. init. | | | |
| 3 Month Construct on Period | | 457,000 | |
| 2nd year Revenues | | | |
| Interest Income | | | |
| Operating Revenues | DOES NOT APPLY | | |
| Bond Sales | | | |
| etc. | | | |
| 3rd year Revenues | | | |
| Interest Income | DOES NOT APPLY | | |
| Operating Revenues | | | |
| Bond Sales etc. | | | |
| . | | | |
| . | | | |
| . | | | |
| . | | | |
| . | | | |
| Project Completion | DOES NOT APPLY | | |

Required Annual OM&R = \$4,900

Source of Funds for OM&R = Annual appropriations by the Wrightsville Beach Board of Aldermen under the authority of North Carolina General Statute 160A-17, which provides for the funding of continuing contracts extending into subsequent fiscal years.

SCHEDULE OF ESTIMATED FEDERAL AND NON-FEDERAL EXPENDITURE

| <u>FISCAL</u> <u>YEAR</u> | FEDERAL | <u>NON-FEDERAL</u> | | | | |
|------------------------------|---------|--------------------|-------------------|--------------|---------------|--------------|
| | | <u>CASH</u> | <u>LERR&D</u> | <u>UTIL.</u> | <u>RELOC.</u> | <u>OTHER</u> |
| 1990 | 848,000 | 457,000 | | | | |

Notes:

1. Federal, Non-Federal cash and LERR&D should be shown for each project purpose.
2. Any repayment for navigation projects should be shown in a footnote.
3. Include in other any associated costs such as berthing areas or interior drainage.

FACT SHEET

Project Name: Wrightsville Beach Shore and Hurricane Wave Protection Project

Location: Wrightsville Beach is an island off the Southeast Coast of North Carolina. It is in New Hanover County about 10 miles east of Wilmington.

Authority: Reauthorized by the Water Resources Development Act of 1986 (PL 99-662). Reevaluation report was entitled "Feasibility Report and Environmental Assessment on Shore and Hurricane Wave Protection" September 1982.

Purpose: Beach erosion control and flood damage reduction.

Description: The project covers 14,000 feet of ocean shoreline extending north from Masonboro Inlet and consists of a beachfill shaped in the form of a 25-foot-wide dune at elevation 15 feet above mean low water datum (MLW) fronted by a 50-foot-wide storm berm at elevation 12 feet MLW. The project is maintained to authorized dimensions and there is no new work.

Maintenance: The locals contribute to the periodic beach nourishment and maintain all the works as prescribed in projects maintenance manual.

Lands, Easements and Rights-of-Way: Were obtained for the original project and are still in place.

Summary of Average Annual Benefits
for
Continual Nourishment of Wrightsville Beach

| Benefit Category | Average Annual Benefits for Interest Rates of 8-7/8% |
|--|---|
| Erosion Control: | |
| (a) Lands | \$172,400 |
| (b) Structures | 176,400 |
| Flood Damage Reduction to Structures | 183,800 |
| Increase in Value of Residential Contents | <u>19,300</u> |
| Total Storm Damage Reduction Benefits | \$551,900 |
| Recreation | <u>372,900</u> |
| Total Average Annual Benefits | \$924,800 |

Benefit-Cost Summary - Continued Maintenance
of the Wrightsville Beach Project
50-Year Period of Analysis

| | |
|-------------------------------|-----------|
| Total Average Annual Benefits | \$924,800 |
| Total Average Annual Costs | 408,300 |
| Benefit to Cost Ratio | 2.3 |

Costs and Benefits
(October 1988 Price Level)

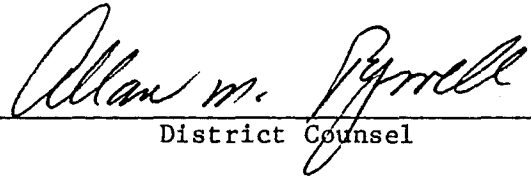
Note: The recommended NED and authorized plans are the same.

| <u>Item</u> | <u>Interest Rate</u> 8-7/8% |
|---|--------------------------------|
| <u>Project First Cost</u> | |
| FY 90 Renourishment | \$1,305,000 |
| Interest During Construction (3-month construction period) | <u>9,700</u> |
| Total Investment Cost | \$1,314,700 |
| <u>Annual Cost</u> | |
| Interest and Amortization FY 90 Renourishment | \$ 118,000 |
| Equivalent Average Annual Cost of Future Renourishment (performed once every 4 years) | 285,400 |
| Vegetative Maintenance | <u>4,900</u> |
| Total Average Annual Cost | \$ 408,300 |

ER 1165-2-131
15 Apr 89

CERTIFICATION OF LEGAL REVIEW

The draft Local Cooperation Agreement for the Wrightsville Beach Shore and Hurricane Wave Protection project has been fully reviewed by the Office of Counsel, USAED, CESAW-OC.


District Counsel



TOWN OF WRIGHTSVILLE BEACH

MUNICIPAL COMPLEX 321 CAUSEWAY DRIVE • P.O. BOX 626
WRIGHTSVILLE BEACH, N.C. 28480 • 919-256-2245

May 11, 1990

Mr. Mike Wutkowski
U.S. Army Corps of Engineers
Wilmington District Office
P. O. Box 1890
Wilmington, NC 28402

Dear Mr. Wutkowski:

This letter is the revised financing plan for the Town's 1990 beach renourishment work required to maintain the Wrightsville Beach Erosion Control and Hurricane Protection Project. This letter will also address how future renourishment projects will be financed, as requested by Mr. Robert N. Daniel, Chief of the Economics and Social Analysis Branch.

The Corps' current cost estimate for the 1990 renourishment project is \$1,305,000, of which the Town must provide 35%, or \$456,750, from non-federal sources. The Town of Wrightsville Beach has \$76,439 appropriated in its current budget for the project. The State of North Carolina originally appropriated \$353,000; however, because of cost overruns, emergency expenditures on other projects and a State revenue shortfall, State funding for the Wrightsville Beach project has now been reduced to \$280,000. A letter dated May 2, 1990, from Mr. John N. Morris, Director of the State Division of Water Resources, is attached to substantiate this change in State funding. The New Hanover County Board of Commissioners originally appropriated up to \$50,000 to the project. To compensate for the reduction in State funding, the Town asked the County Commissioners to appropriate an additional \$73,000, or a total of \$123,000. The County Commissioners approved this additional appropriation at their meeting on May 7. Attached is a letter from Mr. Fred Retchin, Chairman of the New Hanover County Board of Commissioners, verifying this additional County appropriation. Therefore, the total non-federal money designated by the Town, County and State is \$479,439, which exceeds the required 35% non-federal share of the estimated project cost.

The Town, County and State are aware that the Local Cooperation Agreement involves periodic beach renourishments on a recurring basis during the 50 year economic life of the project. State participation in funding for future renourishment work has been formalized and is based in North Carolina General Statutes 143-215.70 through 143-215.73, which authorize State funding of up to 75% of the non-federal share of renourishment costs. A copy of these statutes is attached.

County funding has its source in a room occupancy tax on "the rental of any room, lodging or similar accommodation furnished by any hotel, motel and tourist camp or other similar place within the County". This tax is levied by New Hanover County under the authority of a local act of the North Carolina General Assembly. A 2% tax was originally authorized by the General Assembly in Chapter 908 of its Session Laws of 1983. Under the original authorization,

80% of the revenue was designated to control beach erosion. The tax was increased by Chapter 971 of the Session Laws of 1986 to 3%, and the portion of revenue restricted to use for beach erosion control was reduced to 75% of the total revenues generated by the tax. Approximately \$800,000 of room occupancy tax revenue for beach erosion control projects was collected by New Hanover County in last fiscal year ended June 30, 1989. It was from an accumulated total of \$1.935 million of these restricted room tax revenues that the County has appropriated the \$123,000 for the current Wrightsville Beach renourishment project. Revenue from the room occupancy tax will continue to be the source of County funding for future renourishment work. Copies of Chapter 908 of the General Assembly's Session Laws of 1983, and Chapter 971 of the Session Laws of 1986, are attached.

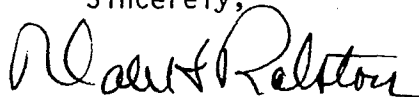
In addition to the major funding for renourishment work from the State and County as described above, the Town, appropriates money annually for the operation and maintenance of the project for such items as planting of beach grass and sea oats, and the placement of sand fences to mitigate wind erosion and to channel pedestrians to the beach through public access points.

With the above described changes in non-federal funding which was occasioned by the State's reduced appropriation, the final pattern for non-federal funding has been established.

I believe Mr. Daniel's questions concerning the financing of future renourishment projects are answered by the State statutes which authorize State funding of up to 75% of the non-federal costs of renourishment, and by the State and County legislation which established the room occupancy tax.

The attractiveness of New Hanover County beaches is the primary base for over one quarter of a billion dollars of economic activity generated annually by tourism in the County. About 40% of the benefits accruing from the continued renourishment of Wrightsville Beach are recreational benefits which directly support tourism activity in the County and the State. The economic activity in the County and State, which is supported by beach renourishment, furnishes strong justification for the County and State to continue funding the periodic renourishments in the future as they have in the past.

Sincerely,



Dale H. Ralston
Town Manager

/plh

Enclosures

Part VIII. New Hanover Occupancy Tax.

Sec. 31. Levy of Tax. (a) The New Hanover County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax.

(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the New Hanover County Board of Commissioners in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.

Sec. 32. Occupancy Tax. The county room occupancy tax that may be levied under this Part shall be two percent (2%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the county that is subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(3). This tax is in addition to any local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations.

Sec. 33. Administration of Tax. (a) Any tax levied under this Part is due and payable to the county in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this Part shall pay a penalty of ten dollars (\$10.00) for each day's omission.

(c) In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, in addition to the penalty prescribed in subsection (b), with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid.

(d) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this Part or to make a return and who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punished by a fine not to exceed one thousand dollars (\$1,000) or by imprisonment not to exceed six months, or both.

Sec. 34. Collection of Tax. Every operator of a business subject to the tax levied by this Part shall, on and after the effective date of the levy of the tax, collect the two percent (2%) room occupancy tax provided by this Part.

This tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of New Hanover County. It is the intent of this Part that the room occupancy tax levied by New Hanover County shall be added to the sales price and that the tax shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall designate, and furnish to all appropriate businesses in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

Sec. 35. Disposition of Taxes Collected. (a) New Hanover County shall, on a quarterly basis, distribute the net proceeds of the occupancy tax to the county and its municipalities in accordance with the method by which the one percent (1%) local sales and use taxes levied in the county pursuant to Article 39 Chapter 105 of the General Statutes are distributed. "Net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax.

(b) All revenue received by New Hanover County or its municipalities from the room occupancy tax shall be used as follows:

(1) eighty percent (80%) of the revenue shall be used to control beach erosion; and

(2) twenty percent (20%) of the revenue shall be used to promote travel and tourism, except that none of this revenue may be used to plan, construct, operate, maintain, or in any way promote a civic center, convention center, public auditorium, or like facility.

For purposes for which revenue from the room occupancy tax may be used by the county and its municipalities may be changed only by resolution of the New Hanover Board of County Commissioners after being approved by a majority of votes cast in an election held in New Hanover County on the question of whether revenue from the room occupancy tax should be used. The ballot presented to the qualified voters of the county in an election concerning the use of revenue from the room occupancy tax shall state all the proposed uses of this revenue and the percentage of the revenue to be used for each purpose. Any change in use of revenue from the room occupancy tax made by the county commissioners after voter approval may likewise be changed only by resolution of the county commissioners after being approved by the voters in another election.

The question of how revenue from the room occupancy tax should be spent shall be submitted to the qualified voters of the county only in a statewide

(i) The Tourism Development Authority may contract with any person, firm, or agency to advise and assist it in the promotion of travel, tourism, and conventions and may recommend to the board of county commissioners that county staff be employed for this advice and assistance. Any county staff employed under this Part shall be hired and supervised by the Tourism Development Authority, which shall pay the salaries and expenses of this staff.

(c) The Tourism Development Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Sec. 30. Repeal of Levy. (a) The board of county commissioners may by resolution repeal the levy of the room occupancy tax in Forsyth County, but no repeal of taxes levied under this Part shall be effective until the end of the fiscal year in which the repeal resolution was adopted.

(b) No liability for any tax levied under this Part that attached prior to the date on which a levy is repealed shall be discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed shall be denied as a result of the repeal.

AN ACT AUTHORIZING NEW HANOVER COUNTY TO LEVY AN ADDITIONAL ONE PERCENT ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX, AND TO ADJUST THE DISTRIBUTION OF OCCUPANCY TAX REVENUE IN NEW HANOVER COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Part VIII of Chapter 908 of the 1983 Session Laws, as amended by Chapter 987 of the 1983 Session Laws, 1984 Regular Session, and by Chapter 726 of the 1985 Session Laws, is amended as follows:

(1) by adding a new section to read:

"Sec. 36.1. Additional Tax. In addition to the tax authorized by Sections 31 and 32 of this Part, the New Hanover County Board of Commissioners may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under those sections. The levy, collection, administration, and repeal of the tax authorized by this section, and the use of tax revenue from a tax levied under this section, shall be in accordance with Sections 31 through 36 of this Part. New Hanover County may not levy a tax under this section unless it also levies a tax under Sections 31 and 32 of this Part."

(2) by deleting the phrase "Eighty percent (80%)" in Section 35(a)(1) and substituting the phrase "Seventy-five percent (75%)" and

(3) by deleting the phrase "Twenty percent (20%)" in Section 35(a)(2) and substituting the phrase "Twenty-five percent (25%)".

Sec. 2. This act is effective upon ratification. Section 2 of this act applies to distributions of revenue collected on or after July 1, 1986.

Part 8. Grants for Water Resources Development
Projects.

§ 143-215.70. Secretary of Natural Resources and
Community Development authorized to
accept applications.

The Secretary is authorized to accept applications for grants for nonfederal costs relating to water resources development projects from units of local government sponsoring such projects, except that this shall not include small watershed projects reviewed by the State Soil and Water Conservation Commission pursuant to G.S. 139-55. (1979, c. 1046, s. 1; 1987, c. 827, s. 154.)

Effect of Amendments. — The 1987 amendment, effective August 13, 1987, substituted "Secretary" for "Secretary of the Department of Natural Resources and Community Development."

§ 143-215.71. Purposes for which grants may be requested.

Applications for grants may be made for the nonfederal share of water resources development projects for the following purposes in amounts not to exceed the percentage of the nonfederal costs indicated:

- (1) General navigation projects that are sponsored by local governments — eighty percent (80%);
- (2) Recreational navigation projects — twenty-five percent (25%);
- (3) Construction costs for water management (flood control and drainage) purposes, including utility and road relocations not funded by the State Department of Transportation — sixty-six and two-thirds percent (66 $\frac{2}{3}$ %), but only of that portion of the project specifically allocated for such flood control or drainage purposes;
- (4) Stream restoration — sixty-six and two-thirds percent (66 $\frac{2}{3}$ %);
- (5) Protection of privately owned beaches where public access is allowed and provided for — seventy-five percent (75%);
- (6) Land acquisition and facility development for water-based recreation sites operated by local governments — fifty percent (50%);
- (7) Aquatic weed control projects sponsored by local governments — fifty percent (50%). (1979, c. 1046, s. 1; 1983, c. 450; 1987, c. 781, s. 1.)

Effect of Amendments. — Session Laws 1987, c. 781, s. 1, effective August 12, 1987, added subdivision (7).

§ 143-215.72. Review of applications.

(a) The Secretary shall receive and review applications for the grants specified in this Part and approve, approve in part, or disapprove such applications.

(b) In reviewing each application, the Secretary shall consider:

- (1) The economic, social, and environmental benefits to be provided by the projects;
- (2) Regional benefits of projects to an area greater than the area under the jurisdiction of the local sponsoring entity;
- (3) The financial resources of the local sponsoring entity;
- (4) The environmental impact of the project;
- (5) Any direct benefit to State-owned lands and properties. (1979, c. 1046, s. 1.)

§ 143-215.73. Recommendation and disbursement of grants.

After review of grant applications, project funds shall be disbursed and monitored by the Department. After review, but before transfer of funds from the Department's reserve fund into accounts for specific projects, the Secretary may forward the applications to the Advisory Budget Commission for its review of the recommendations. (1979, c. 1046, s. 1; 1983, c. 717, s. 70; 1985 (Reg. Sess., 1986), c. 955, s. 93; 1987, c. 827, s. 154.)

Editor's Note. — Section 1 of Session Laws 1985 (Reg. Sess., 1986), c. 955 provides: "This act may be cited as the Separation of Powers Act of 1986."

Session Laws 1985 (Reg. Sess., 1986), c. 955, s. 127, is a severability clause. Effect of Amendments. — The 1985

(Reg. Sess., 1986) amendment, effective July 1, 1986, rewrote this section.

The 1987 amendment, effective August 13, 1987, substituted "Department" for "Department of Natural Resources and Community Development."