

PROJECT SPECIAL PROVISIONS
PERMITS

The Contractor's attention is directed to the following permits which have been issued to the Department of Transportation by the authority granting the permit.

PERMIT

AUTHORITY GRANTING THE PERMIT

Dredge and Fill and/or
Work in Navigable Waters

U. S. Army Corps of Engineers

Water Quality

Division of Environmental Management, DENR
State of North Carolina

CAMA

Division of Coastal Management

The Contractor shall comply with all applicable permit conditions during construction of this project. Those conditions marked by * are the responsibility of the department and the Contractor has no responsibility in accomplishing those conditions.

Agents of the permitting authority will periodically inspect the project for adherence to the permits.

The Contractor's attention is also directed to Articles 107-10 and 107-14 of the Standard Specifications and the following:

Should the Contractor propose to utilize construction methods (such as temporary structures or fill in waters and/or wetlands for haul roads, work platforms, cofferdams, etc.) not specifically identified in the permit (individual, general, or nationwide) authorizing the project it shall be the Contractor's responsibility to coordinate with the Engineer to determine what, if any, additional permit action is required. The Contractor shall also be responsible for initiating the request for the authorization of such construction method by the permitting agency. The request shall be submitted through the Engineer. The Contractor shall not utilize the construction method until it is approved by the permitting agency. The request normally takes approximately 60 days to process; however, no extensions of time or additional compensation will be granted for delays resulting from the Contractor's request for approval of construction methods not specifically identified in the permit.

Where construction moratoriums are contained in a permit condition which restricts the Contractor's activities to certain times of the year, those moratoriums will apply only to the portions of the work taking place in the waters or wetlands provided that activities outside those areas is done in such a manner as to not affect the waters or wetlands.



REPLY TO
ATTENTION OF:

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

Haney

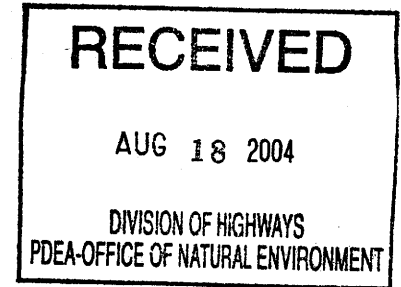


August 13, 2004

Regulatory Division

Subject: Action ID No. 199910718 and Nationwide Permit No. 23 (Approved Categorical Exclusions)

Dr. Gregory J. Thorpe, Ph.D.
Environmental Management Director, PDEA
N.C. Department of Transportation
1548 Mail Service Center
Raleigh, North Carolina 27699-1548



Dear Dr. Thorpe:

Reference your Categorical Exclusion Document, dated July 2000, and your subsequent correspondences dated May 11, 2004, and August 3, 2004, for the replacement of Bridge No. 7 over Corey's Ditch, Federal Aid Project No. BRZ-615 (1), State Project No. 8.1040601, T.I.P. No. B-3445, Currituck County, North Carolina. The stated purpose of the project is to replace the currently functionally obsolete and structurally deficient bridge with new safer and more efficient bridge. The preferred alternative involves staged, simultaneous construction and will adversely impact .185 acres of wetlands and .13 acres of open waters adjacent to N.C. Highway 615 and Corey's Ditch.

For the purposes of the Corps of Engineers Regulatory Program, Title 33, Code of Federal Regulations (CFR), Part 330.6, published in the Federal Register on November 22, 1991, lists nationwide permits. Authorization pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act, was provided for activities undertaken, assisted, authorized, regulated, funded or financed, in whole or part, by another Federal agency or department where that agency or department has determined, pursuant to the CEQ Regulation for the Implementing the Procedural Provisions of the National Environmental Policy Act, that the activity, work or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination.

Review of this project indicates that the construction of the new bridge will adversely impact 0.112 acres of coastal wetlands, 0.073 of fresh-water wetlands and 0.13 acres of surface waters. The wetland and surface water impacts are from the increased approach roadway fill

needed for the proposed bridge structure. The new bridge will provide wider road shoulders on both sides of the new structure for safety.

Your work is authorized under Nationwide Permit 23, Categorical Exclusion, provided it is accomplished in strict accordance with the enclosed Nationwide Permit Conditions and the following special conditions:

*a. Compensatory mitigation for the unavoidable impacts to 0.185 acres of wetlands associated with the proposed project shall be provided by the Ecosystem Enhancement Program (EEP), as provided for by the acceptance letter dated May 18, 2004, from William D. Gilmore, EEP Transition Manager. The EEP will provide 0.112 acres of coastal marsh wetland restoration and 0.073 acres of fresh-water emergent marsh wetland restoration in Hydrologic Cataloging Unit 03010205. The NCDOT shall, within 30 days of the issue date of this permit, certify that sufficient funds have been provided to EEP to complete the required mitigation, pursuant to Paragraph V. of the MOA.

b. To restore hydrology to a more natural state between the Great Marsh and the Back Bay, NCDOT will install 36" aluminum equalizer pipes buried 1 foot under North Carolina Highway 615 at six locations and replace existing pipes at two other locations.

c. To avoid adverse impacts to spawning populations of fish, anadromous and resident species at the project site, NCDOT will follow the "Stream Crossing Guidelines for Anadromous Fish Passage."

d. To avoid adverse impacts to spawning populations of fish species at this project site, no in-water work will be conducted between March 31 and September 30. For the purpose of this moratorium, in water is defined as those areas that are inundated at mean high water.

e. Bridge deck drains will not discharge directly into Corey's Ditch and will not be located water-ward of the riprap alignment under the bridge.

f. No bridge demolition debris or excavated or fill material will be placed at any time, in any wetlands or surrounding waters, outside of the alignment of the fill area indicated on the work plans.

g. The temporary placement or double handling of excavated or fill materials within waters or vegetated wetlands are not authorized.

h. All excavated materials will be confined above normal high water and landward of regularly or irregularly flooded wetlands behind adequate dikes or retaining structures to prevent spillover of solids into any wetlands or surrounding waters.

i. The fill material will be clean and free of any pollutants except in trace quantities. Metal products, organic materials, or unsightly debris will not be used.

j. All measures will be taken to avoid any temporary fill from entering into Corey's Ditch from bridge demolition. Bridge demolition shall follow NCDOT best management practices for construction and maintenance activities dated August 2003 and incorporate NCDOT policy entitled "Bridge Demolition and Removal in Waters of the United States" dated September 20, 1999.

k. Except as authorized by this permit or any USACE approved modification to this 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, or any activities that cause the degradation of waters or wetlands, except as authorized by this permit, or any modification to this permit. This permit does not authorize temporary placement or double handling of excavated or fill material within waters or wetlands outside the permitted area. There shall be no excavation from, waste disposal into, or degradation of, jurisdictional waters or wetlands associated with this permit without appropriate modification of this permit, including appropriate compensatory mitigation. This prohibition applies to all borrow and fill activities connected with this project.

l. To ensure that all borrow and waste activities occur on high ground and do not result in the degradation of adjacent wetlands and streams, except as authorized by this permit, the permittee shall require its contractors and/or agents to identify all areas to be used to borrow material, or to dispose of dredged, fill, or waste material. The permittee shall provide the USACE with appropriate maps indicating the locations of proposed borrow or waste sites as soon as the permittee has that information. The permittee will coordinate with the USACE before approving any borrow or waste sites that are within 400 feet of any streams or wetlands. The permittee shall ensure that all such areas comply with condition (k) of this permit, and shall require and maintain documentation of the location and characteristics of all borrow and disposal sites associated with this project. This information will include data regarding soils, vegetation and hydrology sufficient to clearly demonstrate compliance with the preceding condition (k). All information will be available to the USACE upon request. NCDOT shall require its contractors to complete and execute reclamation plans for each waste and borrow site and provide written documentation that the reclamation plans have been implemented and all work is completed. This documentation will be provided to the Corps of Engineers within 30 days of the completion of the reclamation work.

m. The permittee shall require its contractors and/or agents to comply with the terms and conditions of this permit in the construction and maintenance of this project, and shall provide each of its contractors and/or agents associated with the construction or maintenance of this project with a copy of this permit. A copy of this permit, including all conditions and any Corps approved modifications shall be available at the project site during construction and maintenance of this project.

n. To protect the West Indian Manatee, NCDOT will follow the "Guidelines for Avoiding Impacts to the West Indian Manatee, Precautionary Measures for Construction Activities in North Carolina Waters," prepared by the U.S. Fish and Wildlife Service. A copy of these guidelines is attached to the permit conditions.

o. Any violation of these conditions or violations of Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act must be reported in writing to the Wilmington District, U.S. Army Corps of Engineers, within 24 hours of the violation.

p. The permittee shall notify the United States Coast Guard when construction begins.

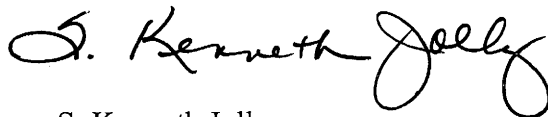
q. The permittee will need to contact the U.S. Fish and Wildlife Service, Mackey Island Wildlife Refuge before construction commences to determine the need in obtaining a special use permit for the project.

r. Failure to institute and carry out the details of special conditions a. - q., above, may result in a directive to cease all ongoing and permitted work within waters and/or wetlands associated with TIP No. B-3445, or such other remedy as the District Engineer or his authorized representatives may seek.

This nationwide permit does not relieve you of the responsibility to obtain any required State or local approval. This permit will be valid for two years from the date of this letter unless the nationwide authorization is modified, reissued or revoked.

Thank you for your time and cooperation. Questions or comments may be addressed to Mr. Bill Biddlecome, Washington Regulatory Field Office, Post Office Box 1000, Washington, North Carolina, 27889, or telephone 252-975-1616, extension 31.

Sincerely,



S. Kenneth Jolly
Chief, Regulatory Division

Enclosures

Copies Furnished (without enclosures)

Mr. John Dorney
Water Quality Section
North Carolina Division of Environment
and Natural Resources
1650 Mail Service Center
Raleigh, North Carolina 27699-1650

Mr. Travis Wilson
Eastern Region Highway Project Coordinator
Habitat Conservation Program
1142 I-85 Service Road
Creedmoor, North Carolina 27522

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

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

Mr. Chris Militscher
U.S. Environmental Protection Agency
Raleigh Office
310 New Bern Avenue, Room 206
Raleigh, North Carolina 27601

Mr. Steve Sollod
Division of Coastal Management
1638 Mail Service Center
Raleigh, North Carolina 27699-1638

Ms. Lynn Mathis
Division of Coastal Management
1367 U.S. Highway 17 South
Elizabeth City, North Carolina 27909

Mr. Tim Cooper
Mackey Island NWR
U.S. Fish and Wildlife Service
PO Box 39
Knotts Island, North Carolina 27950

NATIONWIDE PERMIT 23
DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
FINAL NOTICE OF ISSUANCE AND MODIFICATION OF NATIONWIDE PERMITS
FEDERAL REGISTER
AUTHORIZED MARCH 18, 2002

Approved Categorical Exclusions: Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where that agency or department has determined, pursuant to the Council on Environmental Quality Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) (40 CFR part 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment, and the Office of the Chief of Engineers (ATTN: CECW-OR) has been furnished notice of the agency's or department's application for the categorical exclusion and concurs with that determination. Before to approval for purposes of this nationwide permit of any agency's categorical exclusions, the Chief of Engineers will solicit public comment. In addressing these comments, the Chief of Engineers may require certain conditions for authorization of an agency's categorical exclusions under this nationwide permit. (Sections 10 and 404)

NATIONWIDE PERMIT GENERAL CONDITIONS

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

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

a. In certain states and tribal lands an individual 401 Water Quality Certification must be obtained or waived (See 33 CFR 330.4(c)).

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

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

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

11. Endangered Species.

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

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

habitat can be obtained directly from the offices of the USFWS and NMFS or their World Wide Web pages at <http://www.fws.gov/r9endspp/endspp.html> and <http://www.nfms.noaa.gov/protres/overview/es.html> respectively.

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

✱13. Notification.

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

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

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

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

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

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

2. Location of the proposed project;

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

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

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

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

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

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

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

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

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

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

\1/4\ acre in size, formal wetland delineation must be prepared in accordance with the current method required by the Corps. (See paragraph 13(f));

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

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

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

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

iii. Location of the dredged material disposal site;

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

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

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

14. For NWP 40 (Agricultural Activities), the PCN must include a compensatory mitigation proposal to offset losses of waters of the US. This NWP does not authorize the relocation of greater than 300 linear feet of existing serviceable drainage ditches constructed in non-tidal streams unless, for drainage ditches constructed in intermittent nontidal streams, the District Engineer waives this criterion in writing, and the District Engineer has determined that the project complies with all terms and conditions of this NWP, and that any adverse impacts of the project on the aquatic environment are minimal, both individually and cumulatively;

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

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

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

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

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

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

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

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

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

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

For activities requiring notification to the District Engineer that result in the loss of greater than 1/2-acre of waters of the US, the District Engineer will provide immediately (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy to the appropriate Federal or state offices (USFWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the District Engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The District Engineer will indicate in the administrative record associated with each notification that the resource agencies'

concerns were considered. As required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act, the District Engineer will provide a response to NMFS within 30 days of receipt of any Essential Fish Habitat conservation recommendations. Applicants are encouraged to provide the Corps multiple copies of notifications to expedite agency notification.

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

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

- a. A statement that the authorized work was done in accordance with the Corps authorization, including any general or specific conditions;
- b. A statement that any required mitigation was completed in accordance with the permit conditions; and
- c. The signature of the permittee certifying the completion of the work and mitigation.

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

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

17. Shellfish Beds. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWP 4.

18. Suitable Material. No activity, including structures and work in navigable waters of the US or discharges of dredged or fill material, may consist of unsuitable material (e.g., trash,

debris, car bodies, asphalt, etc.) and material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the CWA).

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

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

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

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

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

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

f. Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., easements, deed restrictions) of vegetated buffers to open waters. In many cases, vegetated buffers will be the only compensatory mitigation required. Vegetated buffers should consist of native species. The width of the vegetated buffers required will address documented water quality or aquatic habitat loss concerns. Normally, the vegetated buffer will be 25 to 50 feet wide on each side of the stream, but the District Engineers may require slightly wider vegetated buffers to address documented water quality or habitat loss concerns. Where both wetlands and

open waters exist on the project site, the Corps will determine the appropriate compensatory mitigation (e.g., stream buffers or wetlands compensation) based on what is best for the aquatic environment or, a watershed basis. In cases where vegetated buffers are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland impacts.

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

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

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

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

This condition is only applicable to projects that have the potential to affect waterflows. While appropriate measures must be taken, it is not necessary to conduct detailed studies to identify such measures or require monitoring to ensure their effectiveness. Normally, the Corps will defer to state and local authorities regarding management of water flow.

22. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes

structures and work in navigable waters of the US, or discharges of dredged or fill material.

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

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

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

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

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

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

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

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

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

floodplain management requirements.

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

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

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

FURTHER INFORMATION

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

DEFINITIONS

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

Compensatory Mitigation: For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts, which remain, after all appropriate and practicable avoidance and minimization has been achieved.

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

exist.

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

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

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

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

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

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

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

Loss of waters of the US: Waters of the US that include the filled area and other waters that are permanently adversely affected by flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent above-grade, at-grade, or below-grade fills that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the US is the threshold measurement of the impact to existing waters for determining whether a project may qualify for a NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and values. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the US temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction, are not included in the measurement of loss of waters of the US. Impacts to ephemeral waters are only not included in the acreage or linear foot measurements of loss of waters of the US or loss of stream bed, for the purpose of determining compliance with the threshold limits of the NWPs.

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

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

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

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

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

Riffle and Pool Complex: Riffle and pool complexes are special aquatic sites under the

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

Single and Complete Project: The term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers (see definition of independent utility). For linear projects, the “single and complete project” (i.e., a single and complete crossing) will apply to each crossing of a separate water of the US (i.e., a single waterbody) at that location. An exception is for linear projects crossing a single waterbody several times at separate and distant locations; each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies.

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

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

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

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

Vegetated Buffer: A vegetated upland or wetland area next to rivers, streams, lakes, or other open waters, which separates the open water from developed areas, including agricultural land. Vegetated buffers provide a variety of aquatic habitat functions and values (e.g., aquatic habitat

for fish and other aquatic organisms, moderation of water temperature changes, and detritus for aquatic food webs) and help improve or maintain local water quality. A vegetated buffer can be established by maintaining an existing vegetated area or planting native trees, shrubs, and herbaceous plants on land next to openwaters. Mowed lawns are not considered vegetated buffers because they provide little or no aquatic habitat functions and values. The establishment and maintenance of vegetated buffers is a method of compensatory mitigation that can be used in conjunction with the restoration, creation, enhancement or preservation of aquatic habitats to ensure that activities authorized by NWP result in minimal adverse effects to the aquatic environment. (See General Condition 19.)

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

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

FINAL REGIONAL CONDITIONS FOR NATIONWIDE PERMITS IN THE WILMINGTON DISTRICT

1. Waters Excluded from NWP or Subject to Additional Notification Requirements:
 - a. The Corps identified waters that will be excluded from use of this NWP. These waters are:
 1. Discharges into Waters of the United States designated by either the North Carolina Division of Marine Fisheries (NCDMF) or the North Carolina Wildlife Resources Commission (NCWRC) as anadromous fish spawning area are prohibited during the period between February 15 and June 30, without prior written approval from NCDMF or NCWRC and the Corps.
 2. Discharges into Waters of the United States designated as sturgeon spawning areas are prohibited during the period between February 1 and June 30, without prior written approval from the National Marine Fisheries Service (NMFS).
 - b. The Corps identified waters that will be subject to additional notification requirements for activities authorized by this NWP. These waters are:
 1. Prior to the use of any NWP in any of the following North Carolina *designated waters*, applicants must comply with Nationwide Permit General Condition 13. In addition, the applicant must furnish a written statement of compliance with all of the conditions of the applicable Nationwide Permit. The North Carolina *designated waters* that require additional notification requirements are "Outstanding Resource Waters" (ORW) and "High Quality

Waters” (HQW) (as defined by the North Carolina Division of Water Quality), or “Inland Primary Nursery Areas” (IPNA) (as defined by the North Carolina Wildlife Resources Commission), or contiguous wetlands (as defined by the North Carolina Division of Water Quality), or “Primary Nursery Areas” (PNA) (as defined by the North Carolina Division of Marine Fisheries).

2. Applicants for any NWP in a designated “Area of Environmental Concern” (AEC) in the twenty (20) coastal counties of Eastern North Carolina covered by the North Carolina Coastal Area Management Act (CAMA), must also obtain the required CAMA permit. Construction activities may not commence until a copy of the approved CAMA permit is furnished to the appropriate Wilmington District Regulatory Field Office (Wilmington Field Office – P.O. Box 1890, Wilmington, NC 28402 or Washington Field Office – P.O. Box 1000, Washington, NC 27889) for authorization to begin work.

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

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

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

Mountain Bogs

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

Piedmont Bogs

Upland Depression Swamp Forest

5. Prior to the use of any NWP in Mountain Trout Waters within twenty-five (25) designated counties of North Carolina, applicants shall comply with Nationwide General Condition 13. In addition, the applicant shall furnish a written statement of compliance with all of the conditions listed of the applicable NWP. Notification will include a letter of comments and recommendations from the North Carolina Wildlife Resources Commission (NCWRC), the

location of work, a delineation of wetlands, a discussion of alternatives to working in the Mountain Trout Waters, why other alternatives were not selected, and a plan to provide compensatory mitigation for all unavoidable adverse impacts to the Mountain Trout Waters. To facilitate coordination with the NCWRC, the proponent may provide a copy of the notification to the NCWRC concurrent with the notification to the District Engineer. The NCWRC will respond both to the proponent and directly to the Corps of Engineers.

The twenty-five (25) designated counties are:

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

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

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

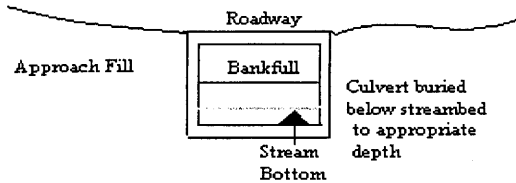
a. Individual or multiple NWP's may not be used for activities that result in the cumulative loss or degradation of greater than 300 total linear feet of perennial streambed or intermittent streambed that exhibits important aquatic function(s).

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

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

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

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



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

NORTH CAROLINA DIVISION OF WATER QUALITY
GENERAL CERTIFICATION CONDITIONS

GC3361

1. Proposed fill or substantial modification of wetlands or waters (including streams) under this General Certification requires notification to the Division of Water Quality. Two copies shall be submitted to DWQ at the time of notification in accordance with 15A NCAC 2H .0501(a). Written concurrence from DWQ is not required unless any standard conditions of this Certification cannot be met;
2. Appropriate sediment and erosion control practices which equal or exceed those outlined in the most recent version of the "North Carolina Sediment and Erosion Control Planning and Design Manual" or the "North Carolina Surface Mining Manual" whichever is more appropriate (available from the Division of Land Resources (DLR) in the DENR Regional or Central Offices) shall be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices in order to assure compliance with the appropriate turbidity water quality standard;

3. In accordance with 15A NCAC 2H .0506 (h) compensatory mitigation may be required for impacts to 150 linear feet or more of streams and/or one acre or more of wetlands. In addition, buffer mitigation may be required for any project with Buffer Rules in effect at the time of application for buffer impacts resulting from activities classified as "allowable with mitigation" within the "Table of Uses" section of the Buffer Rules or require a variance under the Buffer Rules. A determination of buffer, wetland and stream mitigation requirements shall be made for any Certification for this Nationwide Permit. The most current design and monitoring protocols from DWQ shall be followed and written plans submitted for DWQ approval as required in those protocols. When compensatory mitigation is required for a project, the mitigation plans must be approved by DWQ in writing before the impacts approved by the Certification occur. The mitigation plan must be implemented and/or constructed before any permanent building or structure on site is occupied. In the case of public road projects, the mitigation plan must be implemented before the road is opened to the traveling public;
4. Compensatory stream mitigation shall be required at a 1:1 ratio for all perennial and intermittent stream impacts equal to or exceeding 150 feet and that require application to DWQ in watersheds classified as ORW, HQW, Tr, WS-I and WS-II;
5. All sediment and erosion control measures placed in wetlands or waters shall be removed and the original grade restored within two months after the Division of Land Resources has released the project;
6. Measures shall be taken to prevent live or fresh concrete from coming into contact with waters of the state until the concrete has hardened;
7. In accordance with North Carolina General Statute Section 143-215.3D(e), any request for written concurrence for a 401 Water Quality Certification must include the appropriate fee. If a project also requires a CAMA Permit, one payment to both agencies shall be submitted and will be the higher of the two fees;
8. Impacts to any stream length in the Neuse, Tar-Pamlico, Randleman and Catawba River Basins (or any other river basins with Riparian Area Protection Rules [Buffer Rules] in effect at the time of application) requires written concurrence from DWQ in accordance with 15A NCAC 2B.0200. Activities listed as "exempt" from these rules do not need to apply for written concurrence under this Certification. New development activities located in the protected 50-foot wide riparian areas (whether jurisdictional wetlands or not) within the Neuse, Tar-Pamlico, Randleman and Catawba River Basins shall be limited to "uses" identified within and constructed in accordance with 15A NCAC 2B .0200. All new development shall be located, designed, constructed, and maintained to have minimal disturbance to protect water quality to the maximum extent practicable through the use of best management practices;
9. Additional site-specific conditions may be added to projects for which written concurrence is required or requested under this Certification in order to ensure compliance with all applicable water quality and effluent standards;

10. Concurrence from DWQ that this Certification applies to an individual project shall expire three years from the date of the cover letter from DWQ or on the same day as the expiration date of the corresponding Nationwide and Regional General Permits, whichever is sooner;

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

NORTH CAROLINA DIVISION OF COASTAL MANAGEMENT
STATE CONSISTENCY

Consistent.

Citations:

2002 Nationwide Permits - Federal Register Notice 15 Jan 2002

2002 Nationwide Permits Corrections - Federal Register Notice 13 Feb 2002

2002 Regional Conditions – Authorized 17 May 2002

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United States Department of the Interior

FISH AND WILDLIFE SERVICE

Raleigh Field Office
Post Office Box 33726
Raleigh, North Carolina 27636-3726

GUIDELINES FOR AVOIDING IMPACTS TO THE WEST INDIAN MANATEE Precautionary Measures for Construction Activities in North Carolina Waters

The West Indian manatee (*Trichechus manatus*), also known as the Florida manatee, is a Federally-listed endangered aquatic mammal protected under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1461 *et seq.*). The manatee is also listed as endangered under the North Carolina Endangered Species Act of 1987 (Article 25 of Chapter 113 of the General Statutes). The U.S. Fish and Wildlife Service (Service) is the lead Federal agency responsible for the protection and recovery of the West Indian manatee under the provisions of the Endangered Species Act.

Adult manatees average 10 feet long and weigh about 2,200 pounds, although some individuals have been recorded at lengths greater than 13 feet and weighing as much as 3,500 pounds. Manatees are commonly found in fresh, brackish, or marine water habitats, including shallow coastal bays, lagoons, estuaries, and inland rivers of varying salinity extremes. Manatees spend much of their time underwater or partly submerged, making them difficult to detect even in shallow water. While the manatee's principal stronghold in the United States is Florida, the species is considered a seasonal inhabitant of North Carolina with most occurrences reported from June through October.

To protect manatees in North Carolina, the Service's Raleigh Field Office has prepared precautionary measures for general construction activities in waters used by the species. Implementation of these measure will allow in-water projects which do not require blasting to proceed without adverse impacts to manatees. In addition, inclusion of these guidelines as conservation measures in a Biological Assessment or Biological Evaluation, or as part of the determination of impacts on the manatee in an environmental document prepared pursuant to the National Environmental Policy Act, will expedite the Service's review of the document for the fulfillment of requirements under Section 7 of the Endangered Species Act. These measures include:

1. The project manager and/or contractor will inform all personnel associated with the project that manatees may be present in the project area, and the need to avoid any harm to these endangered mammals. The project manager will ensure that all construction personnel know the general appearance of the species and their habit of moving about completely or partially submerged in shallow water. All construction personnel will be informed that they are responsible for observing water-related activities for the presence of manatees.
2. The project manager and/or the contractor will advise all construction personnel that

Figure 1. The whole body of the West Indian manatee may be visible in clear water; but in the dark and muddy waters of coastal North Carolina, one normally sees only a small part of the head when the manatee raises its nose to breathe.

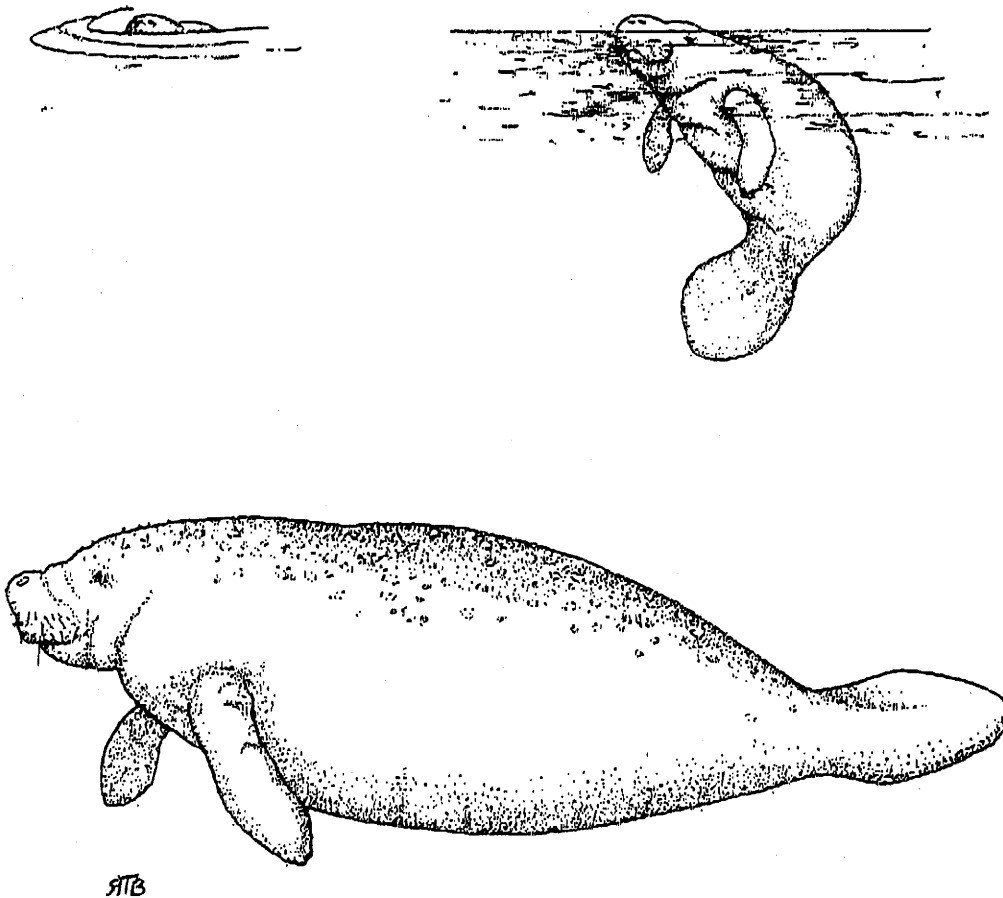


Illustration used with the permission of the North Carolina State Museum of Natural Sciences.
Source: Clark, M. K. 1987. Endangered, Threatened, and Rare Fauna of North Carolina: Part I. A re-evaluation of the mammals. Occasional Papers of the North Carolina Biological Survey 1987-3. North Carolina State Museum of Natural Sciences. Raleigh, NC. pp. 52.



REPLY TO
ATTENTION OF:

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

Permit Number: 199910718/NW23/Currituck County

Permittee: NCDOT/B-3445

Issuance: 13 August 2004

Project Manager: Bill Biddlecome

***Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the following address:**

**Washington Regulatory Field Office
US Army Corps of Engineers
Post Office Box 1000
Washington, NC 27889-1890**

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

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

Signature of Permittee

WQC #3403

GENERAL CERTIFICATION FOR PROJECTS ELIGIBLE FOR CORPS OF ENGINEERS NATIONWIDE PERMIT NUMBER 23 (APPROVED CATEGORICAL EXCLUSIONS) AND RIPARIAN AREA PROTECTION RULES (BUFFER RULES)

This General Certification is issued in conformity with the requirements of Section 401, Public Laws 92-500 and 95-217 of the United States and subject to the North Carolina Division of Water Quality Regulations in 15A NCAC 2H, Section .0500 and 15A NCAC 2B .0200 for the discharge of fill material to waters and wetland areas as described in 33 CFR 330 Appendix A (B) (23) and for the Riparian Area Protection Rules (Buffer Rules) in 15A NCAC 2B .0200. This Certification replaces Water Quality Certification Number 2670 issued on January 21, 1992, Certification Number 2734 issued on May 1 1993, Certification Number 3107 issued on February 11, 1997 and Water Quality Certification Number 3361 issued March 18, 2002. This WQC is rescinded when the Corps of Engineers re-authorizes Nationwide Permit 23 or when deemed appropriate by the Director of the DWQ.

The State of North Carolina certifies that the specified category of activity will not violate applicable portions of Sections 301, 302, 303, 306 and 307 of the Public Laws 92-500 and 95-217 if conducted in accordance with the conditions hereinafter set forth.

Conditions of Certification:

1. Proposed fill or substantial modification of wetlands or waters (including streams) under this General Certification requires notification to the Division of Water Quality. Two copies shall be submitted to DWQ at the time of notification in accordance with 15A NCAC 2H .0501(a). Written concurrence from DWQ is not required unless any standard conditions of this Certification cannot be met;
2. Appropriate sediment and erosion control practices which equal or exceed those outlined in the most recent version of the "North Carolina Sediment and Erosion Control Planning and Design Manual" or the "North Carolina Surface Mining Manual" whichever is more appropriate (available from the Division of Land Resources (DLR) in the DENR Regional or Central Offices) shall be in full compliance with all specifications governing the proper design, installation and operation and maintenance of such Best Management Practices in order to assure compliance with the appropriate turbidity water quality standard;
3. In accordance with 15A NCAC 2H .0506 (h) compensatory mitigation may be required for impacts to 150 linear feet or more of streams and/or one acre or more of wetlands. In addition, buffer mitigation may be required for any project with Buffer Rules in effect at the time of application for buffer impacts resulting from activities classified as "allowable with mitigation" within the "Table of Uses" section of the Buffer Rules or require a variance under the Buffer Rules. A determination of buffer, wetland and stream mitigation requirements shall be made for any Certification for this Nationwide Permit. The most current design and monitoring protocols from DWQ shall be followed and written plans submitted for DWQ approval as required in those protocols. When compensatory mitigation is required for a project, the mitigation plans must be approved by DWQ in writing before the impacts approved by the Certification occur. The mitigation plan must be implemented and/or constructed before any permanent building or structure on

WQC #3403

- site is occupied. In the case of public road projects, the mitigation plan must be implemented before the road is opened to the travelling public;
4. Compensatory stream mitigation shall be required at a 1:1 ratio for not only perennial but also intermittent stream impacts equal to or exceeding 150 feet and that require application to DWQ in watersheds classified as ORW, HQW, Tr, WS-I and WS-II unless the project is a linear, publicly-funded transportation project, which has a 150-foot per-stream impact allowance;
 5. All sediment and erosion control measures placed in wetlands or waters shall be removed and the original grade restored within two months after the Division of Land Resources has released the project;
 6. Measures shall be taken to prevent live or fresh concrete from coming into contact with freshwaters of the state until the concrete has hardened;
 7. In accordance with North Carolina General Statute Section 143-215.3D(e), any request for written concurrence for a 401 Water Quality Certification must include the appropriate fee. If a project also requires a CAMA Permit, one payment to both agencies shall be submitted and will be the higher of the two fees;
 8. Impacts to any stream length in the Neuse, Tar-Pamlico, Randleman and Catawba River Basins (or any other river basins with Riparian Area Protection Rules [Buffer Rules] in effect at the time of application) requires written concurrence from DWQ in accordance with 15A NCAC 2B.0200. Activities listed as "exempt" from these rules do not need to apply for written concurrence under this Certification. New development activities located in the protected 50-foot wide riparian areas (whether jurisdictional wetlands or not) within the Neuse, Tar-Pamlico, Randleman and Catawba River Basins shall be limited to "uses" identified within and constructed in accordance with 15A NCAC 2B .0200. All new development shall be located, designed, constructed, and maintained to have minimal disturbance to protect water quality to the maximum extent practicable through the use of best management practices;
 9. Additional site-specific conditions may be added to projects for which written concurrence is required or requested under this Certification in order to ensure compliance with all applicable water quality and effluent standards;
 10. Concurrence from DWQ that this Certification applies to an individual project shall expire three years from the date of the cover letter from DWQ or on the same day as the expiration date of the corresponding Nationwide and Regional General Permits, whichever is sooner;
 11. When written concurrence is required, the applicant is required to use the most recent version of the Certification of Completion form to notify DWQ when all work included in the 401 Certification has been completed.

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

WQC #3403

The Director of the North Carolina Division of Water Quality may require submission of a formal application for individual certification for any project in this category of activity that requires written concurrence under this certification, if it is determined that the project is likely to have a significant adverse effect upon water quality or degrade the waters so that existing uses of the wetland, stream or downstream waters are precluded.

Public hearings may be held for specific applications or group of applications prior to a Certification decision if deemed in the public's best interest by the Director of the North Carolina Division of Water Quality.

Effective date: March 2003

DIVISION OF WATER QUALITY

By

Alan W. Klimek, P.E.

Director

WQC # 3403



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

Michael F. Easley, Governor

Charles S. Jones, Director

William G. Ross Jr., Secretary

September 3, 2004

NC Department of Transportation
1548 Mail Service Center
Raleigh, NC 27699

Dear Sirs:

The enclosed permit constitutes authorization under the Coastal Area Management Act, and where applicable, the State Dredge and Fill Law, for you to proceed with your project proposal. The original (buff-colored form) is retained by you and it must be available on site when the project is inspected for compliance. Please sign both the original and the copy and return the copy to this office in the enclosed envelope. Signing the permit and proceeding means you have waived your right of appeal described below.

If you object to the permit or any of the conditions, you may request a hearing pursuant to NCGS 113A-121.1 or 113-229. Your petition for a hearing must be filed in accordance with NCGS Chapter 150B with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27611-6714, (919) 733-2698 within twenty (20) days of this decision on your permit. You should also be aware that if another qualified party submits a valid objection to the issuance of this permit within twenty (20) days, the matter must be resolved prior to work initiation. The Coastal Resources Commission makes the final decision on any appeal.

The project plan is subject to those conditions appearing on the permit form. Otherwise, all work must be carried out in accordance with your application. Modifications, time extensions, and future maintenance require additional approval. Please read your permit carefully prior to starting work and review all project plans, as approved. If you are having the work done by a contractor, it would be to your benefit to be sure that he fully understands all permit requirements.

From time to time, Department personnel will visit the project site. To facilitate this review, we request that you complete and mail the enclosed Notice Card just prior to work initiation. However, if questions arise concerning permit conditions, environmental safeguards, or problem areas, you may contact Department personnel at any time for assistance. By working in accordance with the permit, you will be helping to protect our vitally important coastal resources.

Sincerely,

Douglas V. Huggett
Major Permits and Consistency Manager

Enclosure

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

An Equal Opportunity \ Affirmative Action Employer - 50% Recycled \ 10% Post Consumer Paper

Permit Class
NEW

Permit Number
132-04

147

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

Permit

COPY

for

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

Excavation and/or filling pursuant to NCGS 113-229

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

Authorizing development in Currituck County at NC 615 over Corey's Ditch, Bridge No. 7
(TIP No. B-3445) as requested in the permittee's application dated 5/11/04

including the attached workplan drawings as referenced in Condition No. 1 of this permit.

This permit, issued on 9/3/04, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to fines, imprisonment or civil action; or may cause the permit to be null and void.

B-3445, Bridge Replacement

1) All work authorized by this permit must be carried out in accordance with the following workplan drawings, except as modified herein:

Permit drawings: 3 sheets dated 1/18/02 revised 3/27/03; 2 sheets dated 1/18/02; 1 sheet dated 8/28/01 revised 7/2/04; and 1 sheet dated as received on 8/3/04

1/2 size drawings: 2 sheets dated 4/12/04; 2 sheets dated 6/11/02; and 9 sheets dated as received on 5/20/04

2) The permittee shall implement NC DOT's Stream Crossing Guidelines for Anadromous Fish Passage, except as modified in Condition No. 3 of this permit.

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

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

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

All work must cease when the permit expires on

No Expiration Date, pursuant to GS 136-44.7B

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

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

Douglas V Huggitt
for

Charles S. Jones, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.

[Signature]

Signature of Permittee

ADDITIONAL CONDITIONS

- 3) In accordance with project commitments made within the Categorical Exclusion document dated July 2000, no in-water work shall be conducted from March 31st to September 30th of any year without prior approval of the NC Division of Coastal Management (DCM), in consultation with the NC Wildlife Resources Commission (WRC) and the NC Division of Marine Fisheries (DMF).
- 4) In accordance with project commitments made within the Categorical Exclusion document dated July 2000, "Guidelines for Avoiding Impacts to the West Indian Manatee, Precautionary Measures for Construction Activities in North Carolina Waters" will be used to ensure the project will not adversely affect the endangered West Indian Manatee. The most recent version of these guidelines, revised 6/2003, shall be followed.
- 5) Pilings shall be installed by vibratory hammer or pile driver, specifically piles shall not be jettied. Should drilled shaft construction or jetting of any bridge piles become necessary, a modification to this permit will be required.
- 6) The NCDOT document "Best Management Practices for Bridge Demolition and Removal" (final 9/20/99) shall be followed during demolition and construction activities.
- 7) Existing bridge pilings shall be extracted or removed flush with the streambed.
- 8) Turbidity curtains shall be used to isolate all work areas from Corey's Ditch and Back Bay, including pile or casement installation, placement of riprap, excavation or filling. The turbidity curtains shall be installed parallel to the banks on each side of the ditch or the bay. The turbidity curtains shall extend past the construction limits and attach to the silt fences containing the work site. The turbidity curtains shall not encircle a work area or extend across Corey's Ditch. The turbidity curtains are to be properly maintained and retained in the water until construction is complete and all of the work area contained by the turbidity curtains has been stabilized by vegetation or other means. The turbidity curtains shall be removed when turbidity within the curtains reaches ambient levels.
- 9) All excavated materials and debris associated with the removal of the existing bridge and existing causeway will be disposed of on an approved upland site.
- 10) The temporary placement or double handling of excavated or fill materials within waters or vegetated wetlands are not authorized.
- 11) All excavated materials will be confined above normal water level and landward of regularly or irregularly flooded wetlands behind adequate dikes or other retaining structures to prevent spillover of solids into any wetlands or surrounding waters.
- 12) Debris resulting from demolition of the existing bridge, including deck components, shall not enter wetlands or waters of the United States, even temporarily.
- 13) No excavated or fill material will be placed at any time in any vegetated wetlands or surrounding waters outside of the alignment of the fill area indicated on the work plan drawing(s).
- 14) The fill material will be clean and free of any pollutants except in trace quantities.

ADDITIONAL CONDITIONS

- 15) Placement of riprap shall be limited to the areas as depicted on the attached work plan drawings. The riprap material must be free from loose dirt or any pollutant. It must be of a size sufficient to prevent its movement from the site by wave or current action. The riprap material must consist of clean rock or masonry materials, such as but not limited to, granite or broken concrete.
- 16) The steel sheet pile shall be in place prior to any backfill activities.
- 17) The steel sheet pile bulkhead must be structurally tight so as to prevent seepage of backfill materials through the structure.
- 18) Live concrete shall not be allowed to contact waters of the state or water that will enter waters of the state.

Sedimentation and Erosion Control

- 19) The permittee shall follow Best Management Practices for the Protection of Surface Waters and sedimentation and erosion control measures sufficient to protect aquatic resources.
- 20) Appropriate sedimentation and erosion control devices, measures or structures must be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses and property (e.g. silt fence, diversion swales or berms, etc.).
- 21) This project must conform to all requirements of the NC Sedimentation Pollution Control Act and NC DOT's Memorandum of Agreement with the Division of Land Resources.

Mitigation

- 22) A Mitigation Plan shall be submitted to DCM describing in-kind mitigation for 1:1 replacement, or its equivalent, of approximately 0.19 acres of permanent wetland impacts, which includes 4,922 square feet or approximately 0.11 acres of coastal wetlands associated with the project. The Ecosystem Enhancement Program (EEP) may provide this compensatory mitigation, however, information shall be provided in the form of a Mitigation Plan with specific reference to ratio, location, and wetland type. The mitigation must be submitted, receive DCM approval, and be in place within three years of issuance of this permit.
- 23) In accordance with the Right-of-Way Permit issued by the US Fish and Wildlife Service on August 18, 2003, a total of seven new culverts and replacement and upgrade of two existing equalizer pipes with pipes of a minimum diameter of 36 inches, 48 inches where road elevations permit, will be installed to enhance sheet flow and reduce hydraulic pressure on Corey's Ditch. The culvert inverts must be buried a minimum of one foot below grade to allow for adequate passage of water and aquatic life.
- 24) Placement of riprap at equalizer pipes must be the minimum necessary to protect or ensure shoulder slope stability.

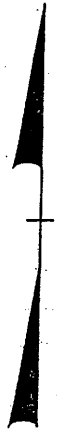
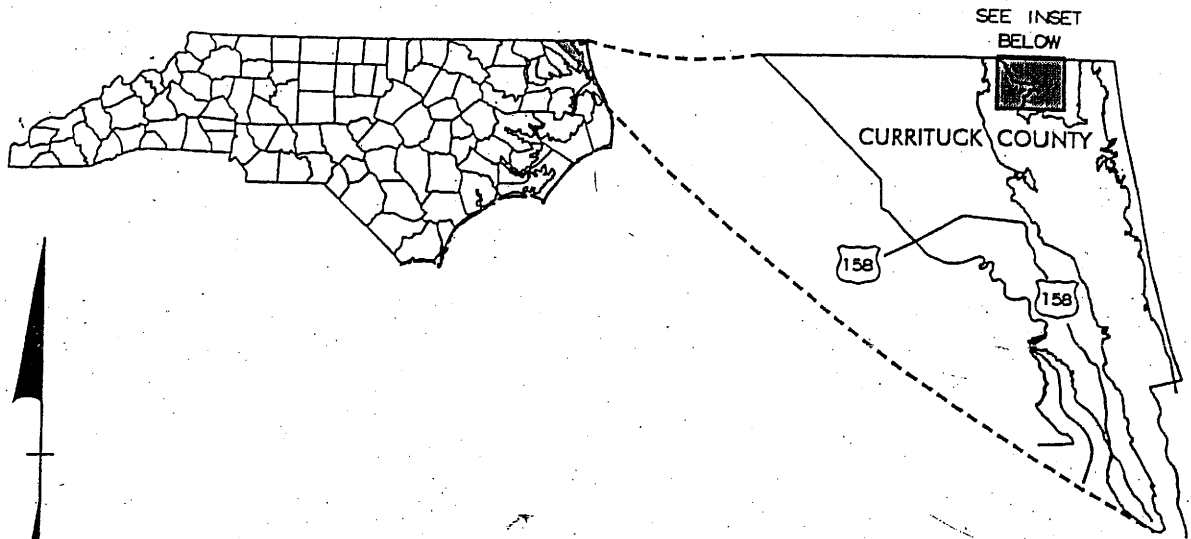
ADDITIONAL CONDITIONS

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

General

- 26) Any relocation of utility lines that is not already depicted on the attached work plan drawings, or described within the attached permit application, will require approval by DCM, either under the authority of this permit, or by the utility company obtaining separate authorization.
- 27) If the permittee determines that additional permanent and/or temporary impacts will occur that are not shown on the attached permit drawings, additional authorization from DCM will be required.
- 28) This permit does not eliminate the need to obtain any additional permits, approvals or authorizations that may be required.
- 29) The N.C. Division of Water Quality (DWQ) has authorized the proposed project under a General Water Quality Certification (DWQ Project No. 01-1742), which was issued on 11/28/01. Any violation of the Certification approved by the DWQ will be considered a violation of this CAMA permit.
- 30) The Division of Water Quality (DWQ) approval of this project under stormwater management rules of the Environmental Management Commission is covered by way of Stormwater Permit No. SW7020604 which was issued on 7/25/02. Any violation of the permit approved by the DWQ will be considered a violation of this CAMA permit.

NOTE: The U.S. Army Corps of Engineers authorized the proposed project under Nationwide Permit Number 23 (COE Action ID No. 199910718), which was issued on 8/13/04.

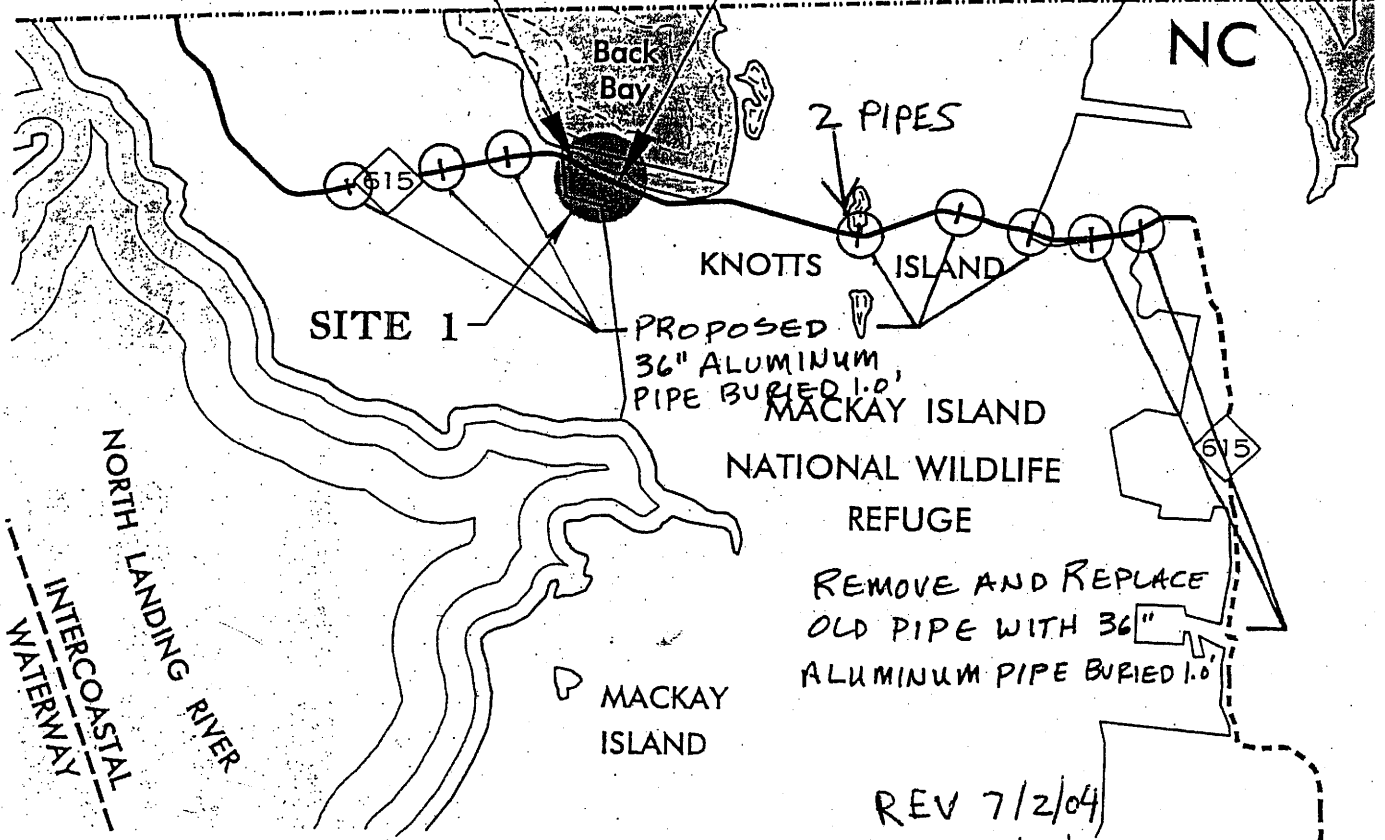


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B-3445

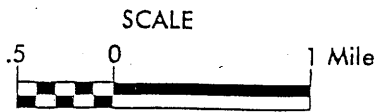
END PROJECT
B-3445

TO US 58

VA
NC



REV 7/2/04
REV. 3/27/03



N.C. DEPT. OF TRANSPORTATION
DIVISION OF HIGHWAYS

CURRITUCK COUNTY

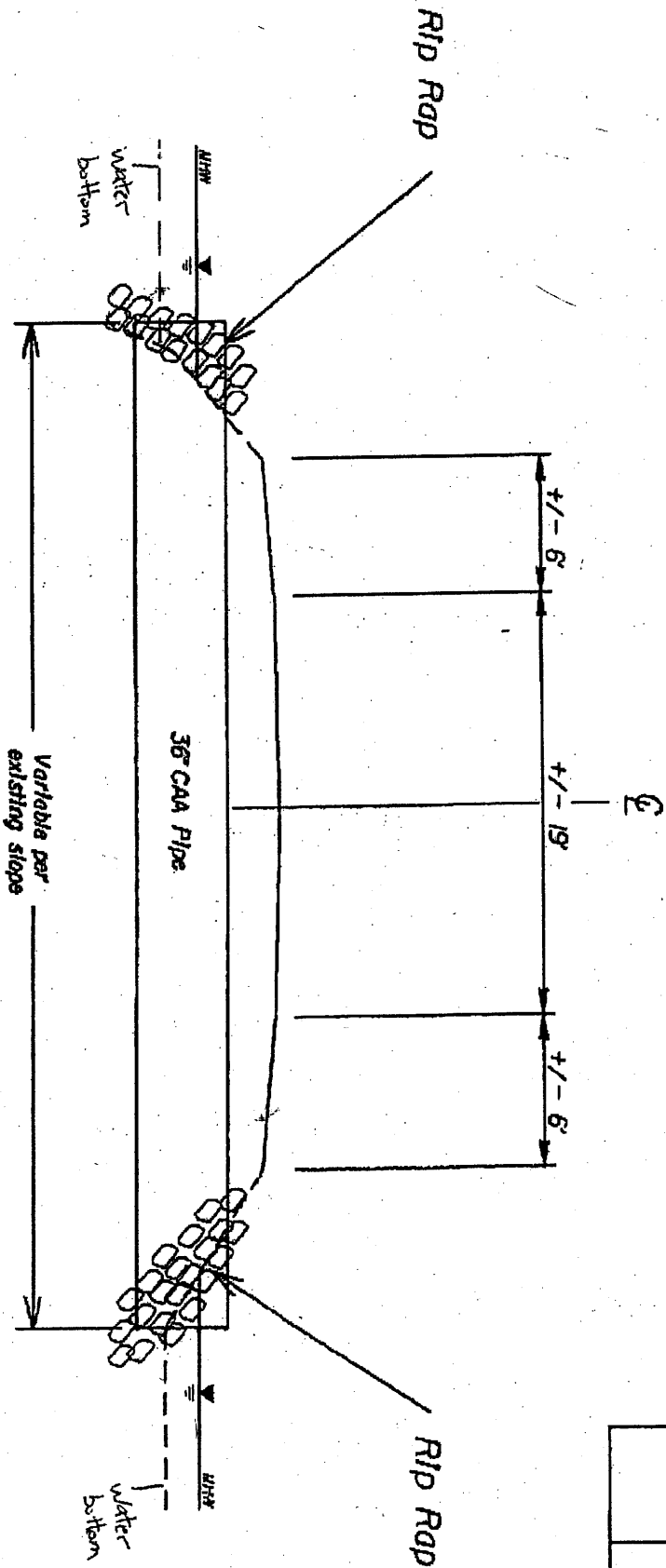
PROJECT: 8.1040601 (B-3445)
PROPOSED REPLACEMENT OF
BRIDGE NO. 7 OVER COREYS DITCH

RECEIVED

AUG 09 2004

DIV. OF COASTAL MANAGEMENT
RALEIGH

PROJECT NO.	
DATE	
BY	
CHECKED	
APPROVED	



TYPICAL SECTION
CROSSLINE PIPE INSTALLATION

1 inch = 8 feet

153
RECEIVED

MAY 20 2004

COASTAL MANAGEMENT
ELIZABETH CITY

REV 3/27/03

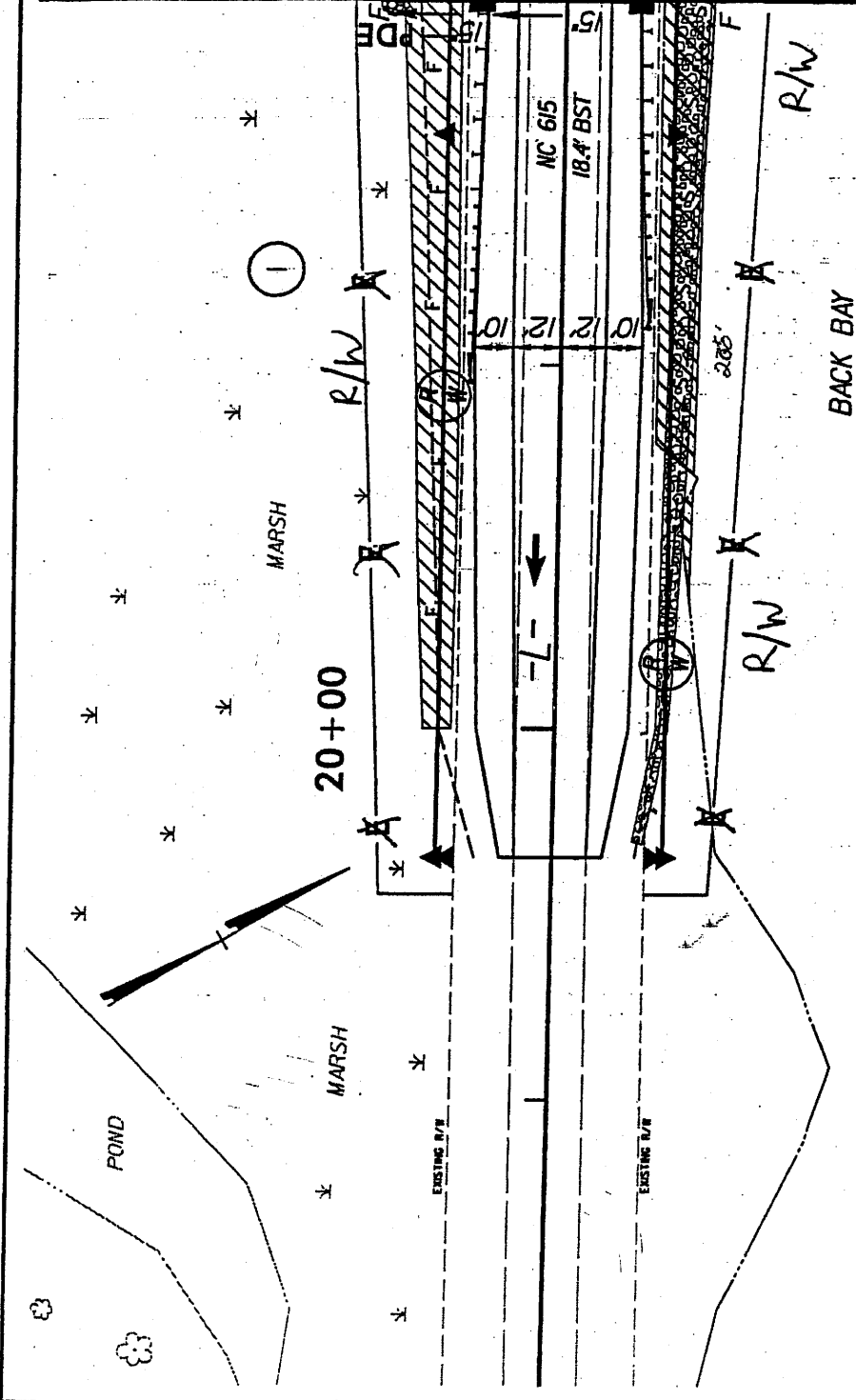
N.C. DEPT. OF TRANSPORTATION
DIVISION OF HIGHWAYS

CURRITUCK COUNTY

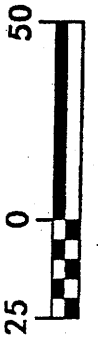
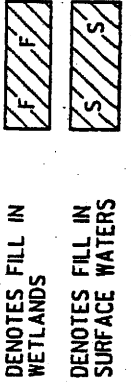
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PROPOSED REPLACEMENT OF
BRIDGE NO.7 OVER COREYS DITCH

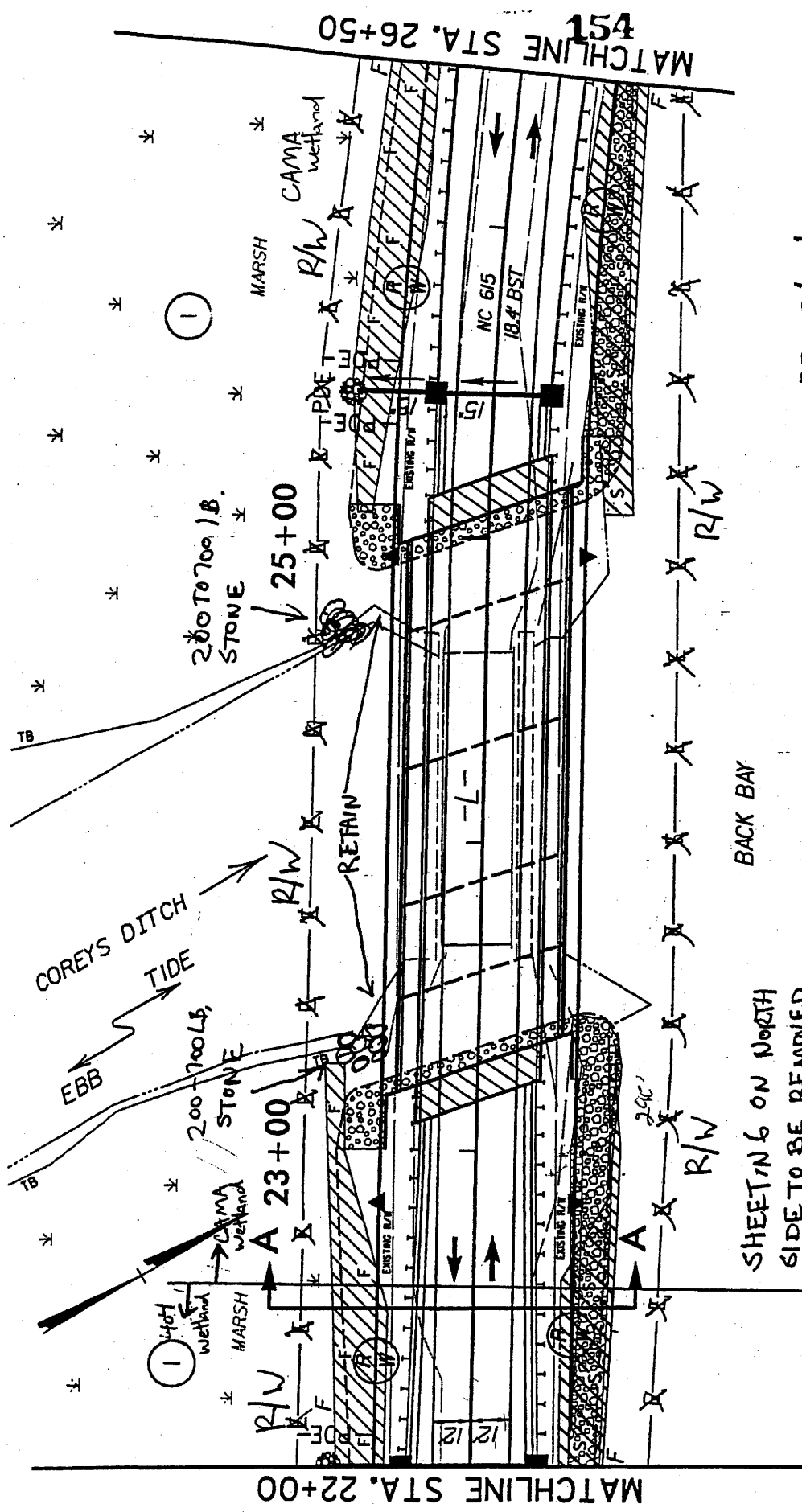
3 - 9

MATCHLINE STA. 22+00



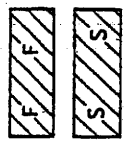
PLAN VIEW
SITE I





REV. 3/27/03

N.C. DEPT. OF TRANSPORTATION
 DIVISION OF HIGHWAYS
 CURRITUCK COUNTY
 PROJECT: 8.1040601 (B-3445)
 PROPOSED REPLACEMENT OF
 BRIDGE NO. 7 OVER COREYS DITCH
 SHEET 4 OF 9



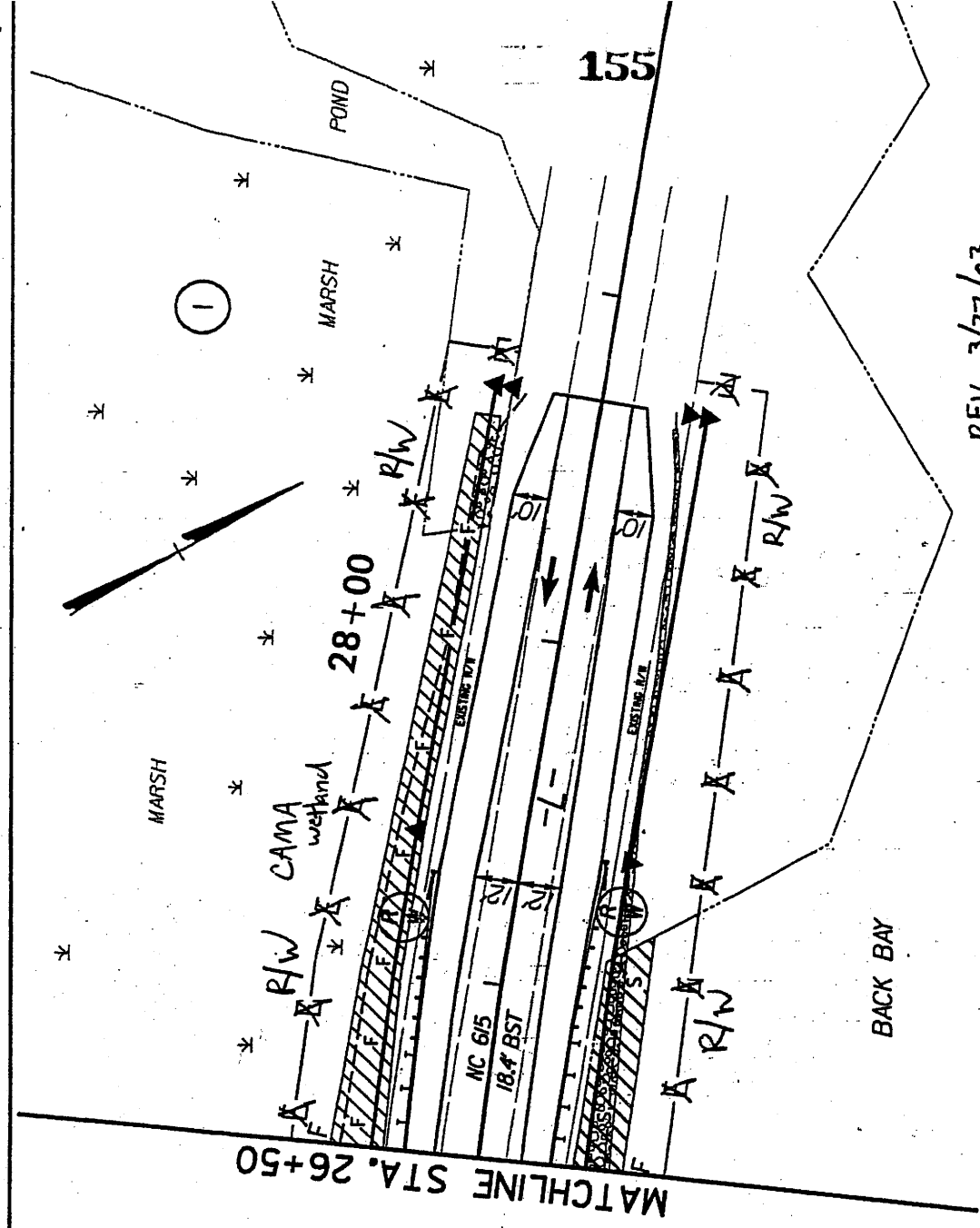
DENOTES FILL IN
 WETLANDS
 DENOTES FILL IN
 SURFACE WATERS

BACK BAY
 SHEETING ON NORTH
 SIDE TO BE REMOVED
 SHEETING ON SOUTH
 SIDE TO BE
 RETAINED AS MUCH
 AS POSSIBLE



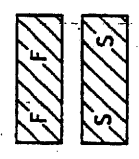
MATCHLINE STA. 22+00

MATCHLINE STA. 26+50



REV. 3/27/03

N.C. DEPT. OF TRANSPORTATION
 DIVISION OF HIGHWAYS
 CURRITUCK COUNTY
 PROJECT: 810-0601 (B-3445)
 PROPOSED REPLACEMENT OF
 BRIDGE NO. 7 OVER COREYS DITCH



DENOTES FILL IN WETLANDS
 DENOTES FILL IN SURFACE WATERS

PLAN VIEW
 SITE 1

MATCHLINE STA. 26+50

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MAY 20 2006

COASTAL MANAGEMENT
 ELIZABETH CITY



CL BRIDGE STA. = 24+18.00 -L-
 2 @ 30 ft, 2 @ 45 ft, 1 @ 30 ft
 21" CORED SLAB BRIDGE
 SKEW = 70°
 CROWN GRADE ELEV. = 7.95

0.100 EL = 6.3
 (STILLWATER)

0.50 EL = 6.0
 (STILLWATER)

MTL = 1.00
 NG
 -L- PVC 22+05.000

MLT = 0.10
 NG
 -L- PVC 26+30.000

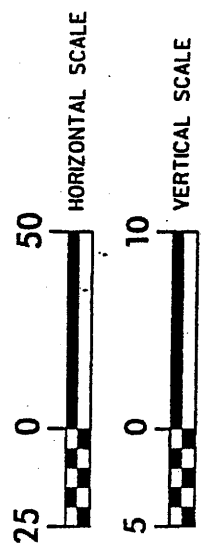
-L- PVT 26+15.000
 (-)1.8969.

MATERIAL TO
 BE REMOVED
 (TYP.)

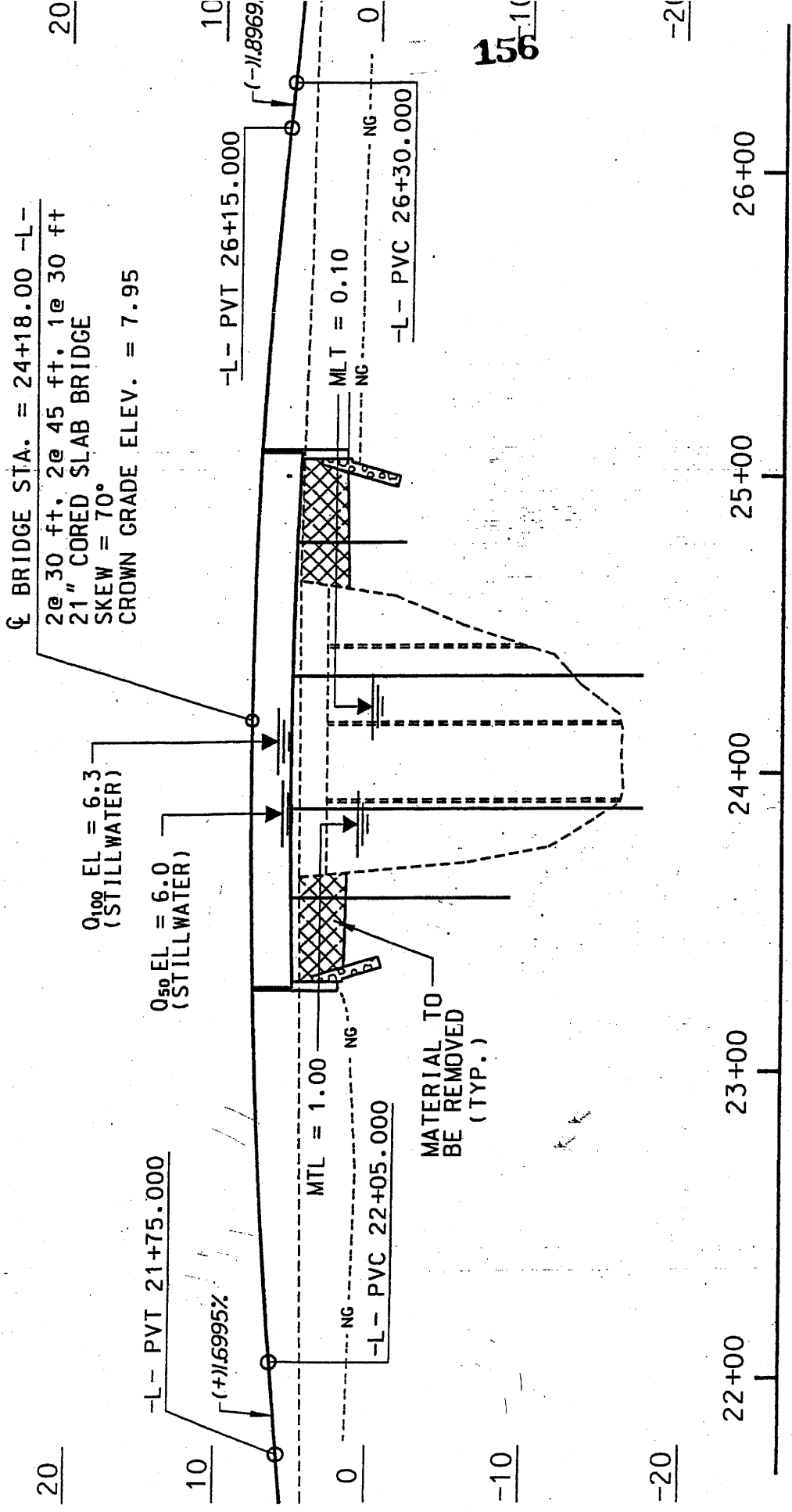
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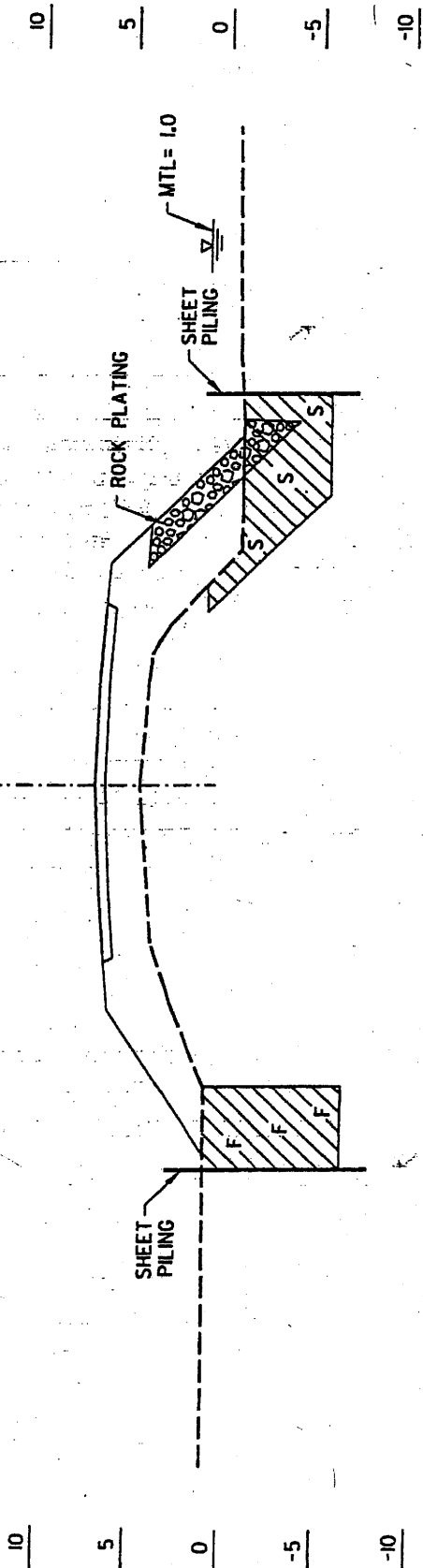
PROFILE SITE 1



N.C. DEPT. OF TRANSPORTATION
 DIVISION OF HIGHWAYS
 CURRITUCK COUNTY
 PROJECT 8.10/0601 (B-3445)
 PROPOSED REPLACEMENT OF
 BRIDGE NO. 7 OVER COREYS DITCH
 SHEET 6 OF 9 1/18/02



☉ 22+50 -L-



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MAY 20 2004

COASTAL MANAGEMENT
ELIZABETH CITY

SECTION A-A
SITE 1

N.C. DEPT. OF TRANSPORTATION
DIVISION OF HIGHWAYS

CURRITUCK COUNTY

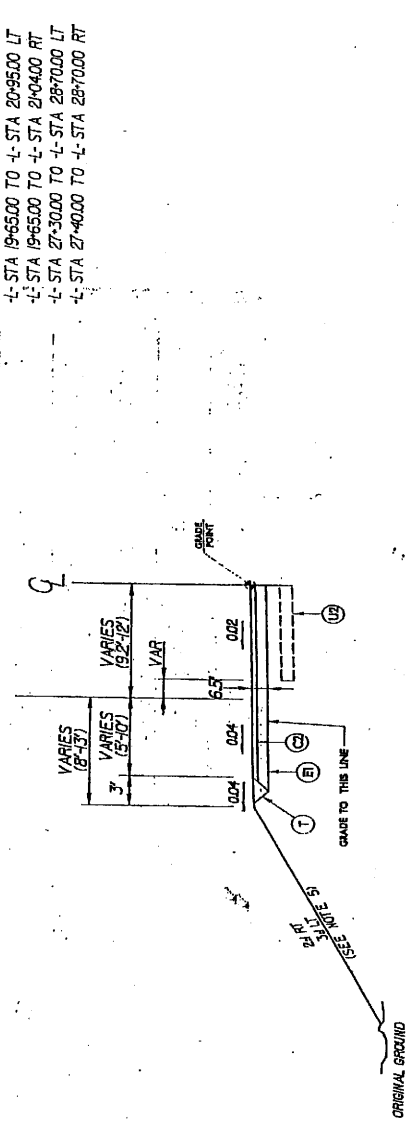
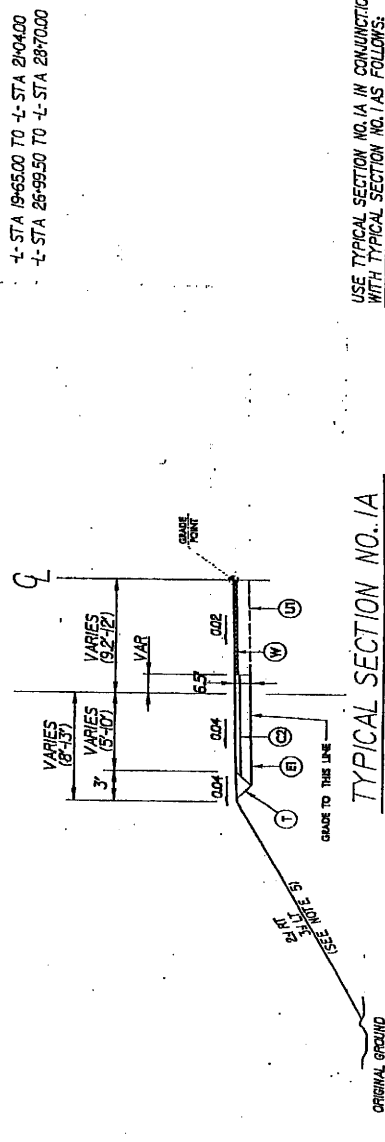
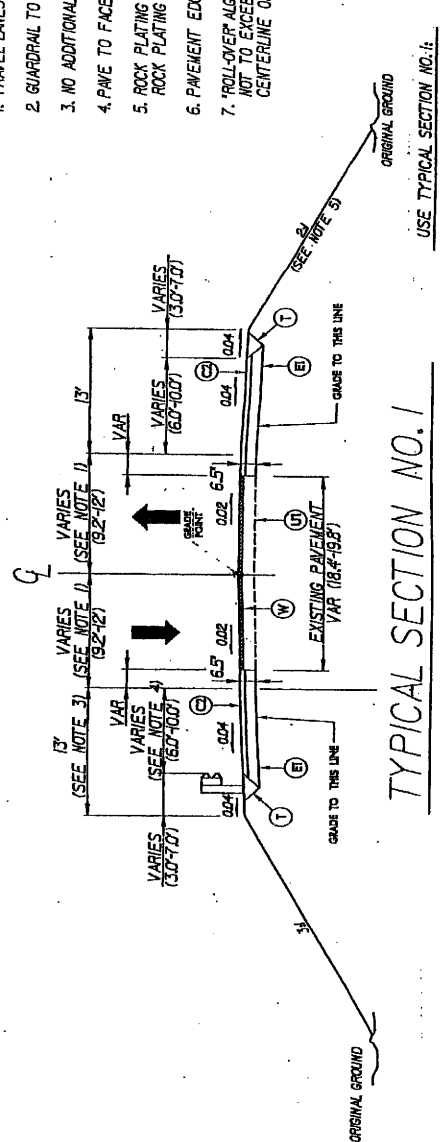
PROJECT: 8.1040601 (B-3446)

PROPOSED REPLACEMENT OF
BRIDGE NO.7 OVER COREYS DITCH

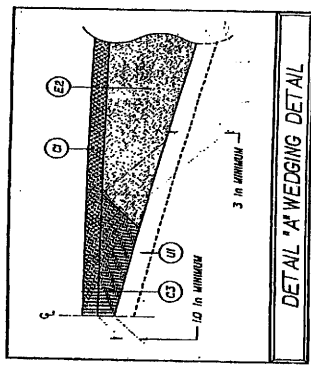
SHEET 7 OF 9

1/18/03

- NOTES:**
- TRAVEL LANES ARE 12 FT FROM STA 2+05.00 TO STA 27-35.00
 - GUARDRAIL TO BE PLACED AS SHOWN IN PLAN VIEW
 - NO ADDITIONAL WIDENING REQUIRED FOR GUARDRAIL
 - PAVE TO FACE OF GUARDRAIL
 - ROCK PLATING TO BE PLACED AS SHOWN IN PLAN VIEW (SEE ROCK PLATING DETAIL SHEET 2A)
 - PAVEMENT EDGE SLOPES ARE H UNLESS SHOWN OTHERWISE
 - ROLL-OVER ALGEBRAIC DIFFERENCE IN RATES OF CROSS SLOPE NOT TO EXCEED 0.05. IF SUPERELEVATION IS REVOLVED ABOUT CENTERLINE OF PAVEMENT, SAME APPLIES.



RECEIVED
 MAY 20 2004
 COASTAL MANAGEMENT
 ELIZABETH CITY



USE TYPICAL SECTION NO. 1A IN CONJUNCTION WITH TYPICAL SECTION NO. 1AS FOLLOWS:

- L- STA 19+65.00 TO -L- STA 20+95.00 LT
- L- STA 19+65.00 TO -L- STA 21+04.00 RT
- L- STA 27+30.00 TO -L- STA 2870.00 LT
- L- STA 27+40.00 TO -L- STA 2870.00 RT

USE TYPICAL SECTION NO. 2A IN CONJUNCTION WITH TYPICAL SECTION NO. 2 AS FOLLOWS:

- L- STA 21+04.00 TO -L- STA 22+00.00 LT
- L- STA 21+04.00 TO -L- STA 22+00.00 RT
- L- STA 25+46.00 TO -L- STA 26+99.50 LT
- L- STA 25+46.00 TO -L- STA 26+99.50 RT

158


PAVEMENT SCHEDULE	
C1	PROP. APPROX. 1 1/2" ASPHALT CONCRETE SURFACE COURSE, TYPE SP3.5A, AT AN AVERAGE RATE OF 137.5 LBS. PER SQ. YD.
C2	PROP. APPROX. 2 1/2" ASPHALT CONCRETE SURFACE COURSE, TYPE SP3.5A, AT AN AVERAGE RATE OF 137.5 LBS. PER SQ. YD. IN EACH OF TWO LAYERS.
C3	PROP. VAR. DEPTH ASPHALT CONCRETE SURFACE COURSE, TYPE SP3.5A, AT AN AVERAGE RATE OF 110 LBS. PER SQ. YD. PER 1" DEPTH, BUT NOT LESS THAN 1 1/4" IN DEPTH, OR GREATER THAN 1 1/2" IN DEPTH.
E1	PROP. APPROX. 4" ASPHALT CONCRETE BASE COURSE, TYPE 825.0B, AT AN AVERAGE RATE OF 456 LBS. PER SQ. YD.
E2	PROP. VAR. DEPTH ASPHALT CONCRETE BASE COURSE, TYPE 825.0B, AT AN AVERAGE RATE OF 456 LBS. PER SQ. YD. PER 1" DEPTH, BUT NOT LESS THAN 3/4" IN DEPTH, OR GREATER THAN 1 1/2" IN DEPTH.
J	PROP. 8" AGGREGATE BASE COURSE.
R	SHOULDER BEEM GUTTER.
T	EARTH MATERIAL.
U1	EXISTING PAVEMENT.
U2	EXISTING PAVEMENT - SCARIFIED.
W	VARIABLE DEPTH ASPHALT PAVEMENT (SEE DETAIL "A" - WEDGING DETAIL - THIS SHEET)

B-3425 2A

HW SHEET NO. 2A

ROADWAY DESIGN

INWARD DESIGN ENGINEER



Carter Burgess

Consultants in Planning, Engineering, Architecture, Construction Management and Real Estate Services

1000 North Salisbury Street
Raleigh, North Carolina 27601

159

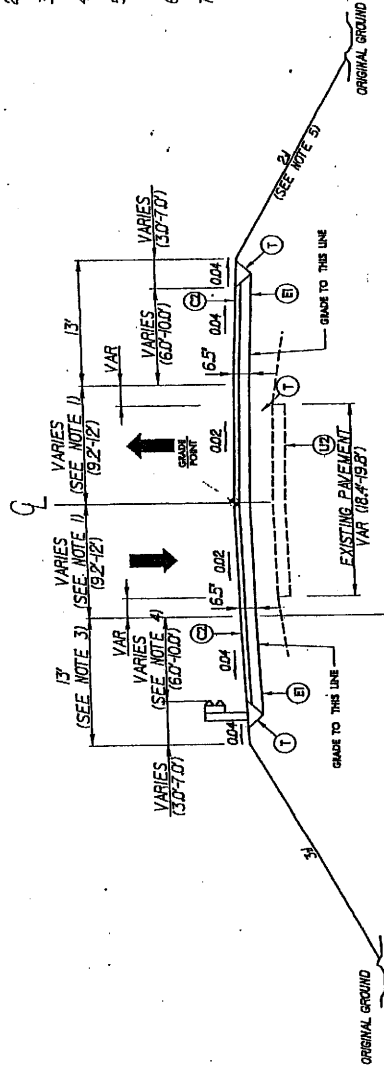
NOTES:

- TRAVEL LANES ARE 12 FT. FROM STA 2405.00 TO STA 27+35.00
- GUARDRAIL TO BE PLACED AS SHOWN IN PLAN VIEW
- NO ADDITIONAL WIDENING REQUIRED FOR GUARDRAIL
- PAVE TO FACE OF GUARDRAIL
- ROCK PLATING TO BE PLACED AS SHOWN IN PLAN VIEW (SEE ROCK PLATING DETAIL SHEET 2A)
- PAVEMENT EDGE SLOPES ARE 4 UNLESS SHOWN OTHERWISE
- ROLL-OVER ALGEBRAIC DIFFERENCE IN RATES OF CROSS SLOPE NOT TO EXCEED 0.06. IF SUPERELEVATION IS REQUIRED ABOUT CENTERLINE OF PAVEMENT, SAME APPLIES.

PAVEMENT SCHEDULE	
C1	1 1/4" S9.5A
C2	2 1/4" S9.5A
C3	VAR. DEPTH S9.5A
E1	4" B25.0B
E2	VAR. DEPTH B25.0B
J	8" ABC
R	SHOULDER BERM GUTTER
T	EARTH MATERIAL
U1	EXISTING PAVEMENT
U2	EXISTING PAVEMENT (SCAFFIRED)
W	WEDGING - SEE DETAIL ON SHEET 2

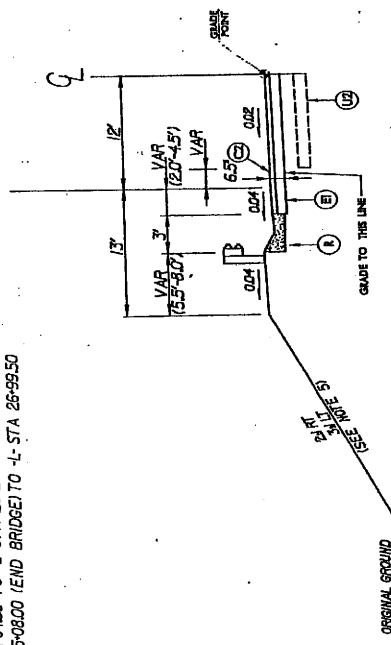
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MAY 20 2004
COASTAL MANAGEMENT
ELIZABETH CITY



TYPICAL SECTION NO. 2

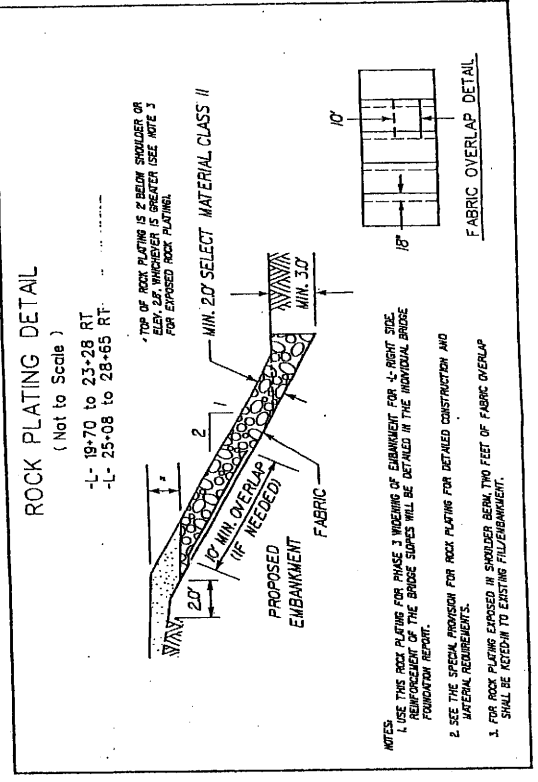
USE TYPICAL SECTION NO. 2:
-L- STA 2404.00 TO -L- STA 23+28.00 (BEGIN BRIDGE)
-L- STA 25+08.00 (END BRIDGE) TO -L- STA 26+99.50



TYPICAL SECTION NO. 2B

USE TYPICAL SECTION NO. 2A IN CONJUNCTION WITH TYPICAL SECTION NO. 2 AS FOLLOWS:
-L- STA 22+00.00 LT TO -L- STA 23+09.00 LT
-L- STA 22+00.00 RT TO -L- STA 23+23.00 RT
-L- STA 25+13.00 LT TO -L- STA 25+46.00 LT
-L- STA 25+27.00 RT TO -L- STA 25+46.00 RT

USE TYPICAL SECTION NO. 1A IN CONJUNCTION WITH TYPICAL SECTION NO. 2 AS FOLLOWS:
-L- STA 24+04.00 TO -L- STA 24+10.00 RT

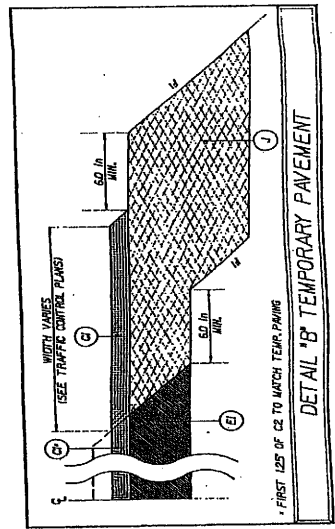


ROCK PLATING DETAIL
(Not to Scale)

-L- 19+70 to 23+28 RT
-L- 25+08 to 28+65 RT

* TOP OF ROCK PLATING IS 2' BELOW SHOULDER OR ELEV. 2'. WHICHEVER IS GREATER (SEE NOTE 3 FOR EXPOSED ROCK PLATING)

- NOTES:
- USE THIS ROCK PLATING FOR PHASE 3 WIDENING OF EMBANKMENT FOR 4-NORTH SIDE REINFORCEMENT OF THE BRIDGE SLOPES WILL BE DETAIL IN THE INDIVIDUAL BRIDGE FOUNDATION REPORT.
 - SEE THE SPECIAL PROVISION FOR ROCK PLATING FOR DETAILED CONSTRUCTION AND MATERIAL REQUIREMENTS.
 - FOR ROCK PLATING EXPOSED IN SHOULDER BERM, TWO FEET OF FABRIC OVERLAP SHALL BE KEPT IN EXISTING FILLS/EMBANKMENT.



DETAIL 'B' TEMPORARY PAVEMENT

* FIRST 125' OF C2 TO MATCH TEMP. PAVING

SEE SHEETS 51 THRU 5-43 FOR STRUCTURE PLANS

TRAN SITE CONSULTING ENGINEERS, INCORPORATED
 ENGINEERS • PLANNERS • CEMT
 1200 HUNTER AVENUE, SUITE 548
 HUNTER, NEW YORK 11753-1000
 PHONE 716-223-4444 FAX 716-223-4444

Cartier-Burges
 Consultants in Planning, Engineering, Construction Management and Real Estate Services
 1000 WEST 10TH AVENUE, SUITE 1000
 HUNTER, NEW YORK 11753-1000
 PHONE 716-223-4444 FAX 716-223-4444

UNITED STATES DEPARTMENT OF THE INTERIOR
 FISH AND WILDLIFE SERVICE
 DB 96 PG 228
 MB 2 PG4

1
 END STATE PROJECT B-3445
 L-PC STA 27+40.80

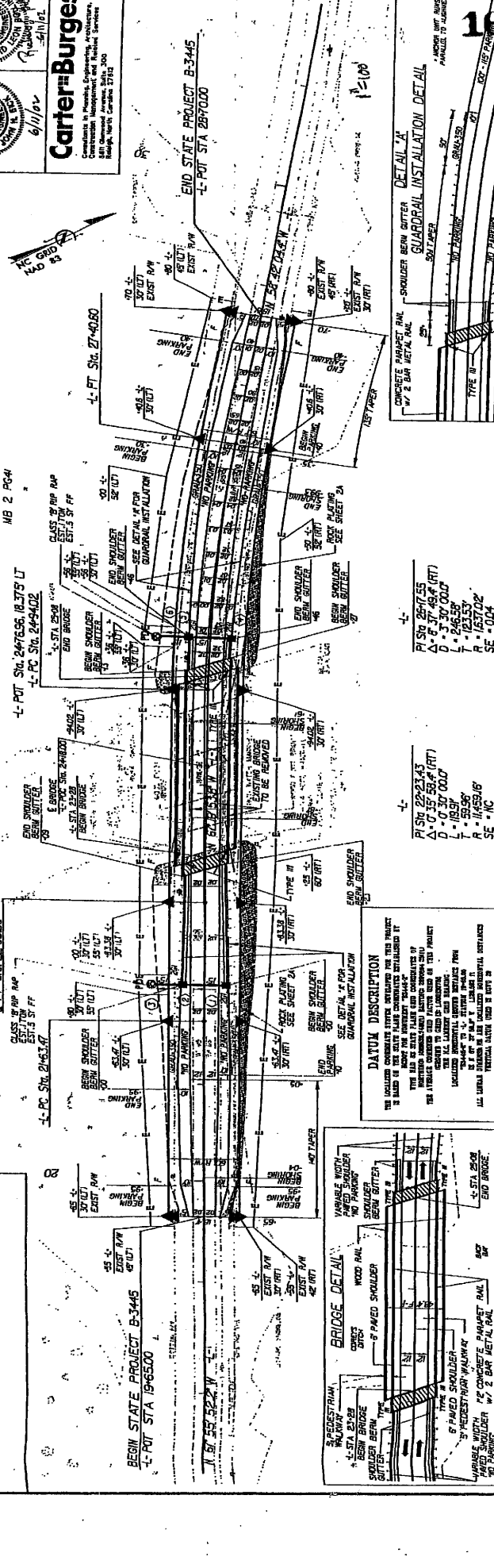
END STATE PROJECT B-3445
 L-PC STA 27+40.80

END STATE PROJECT B-3445
 L-PC STA 27+40.80

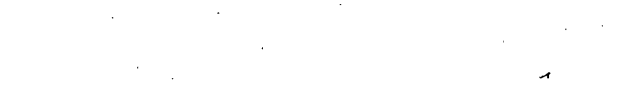
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END STATE PROJECT B-3445
 L-PC STA 27+40.80

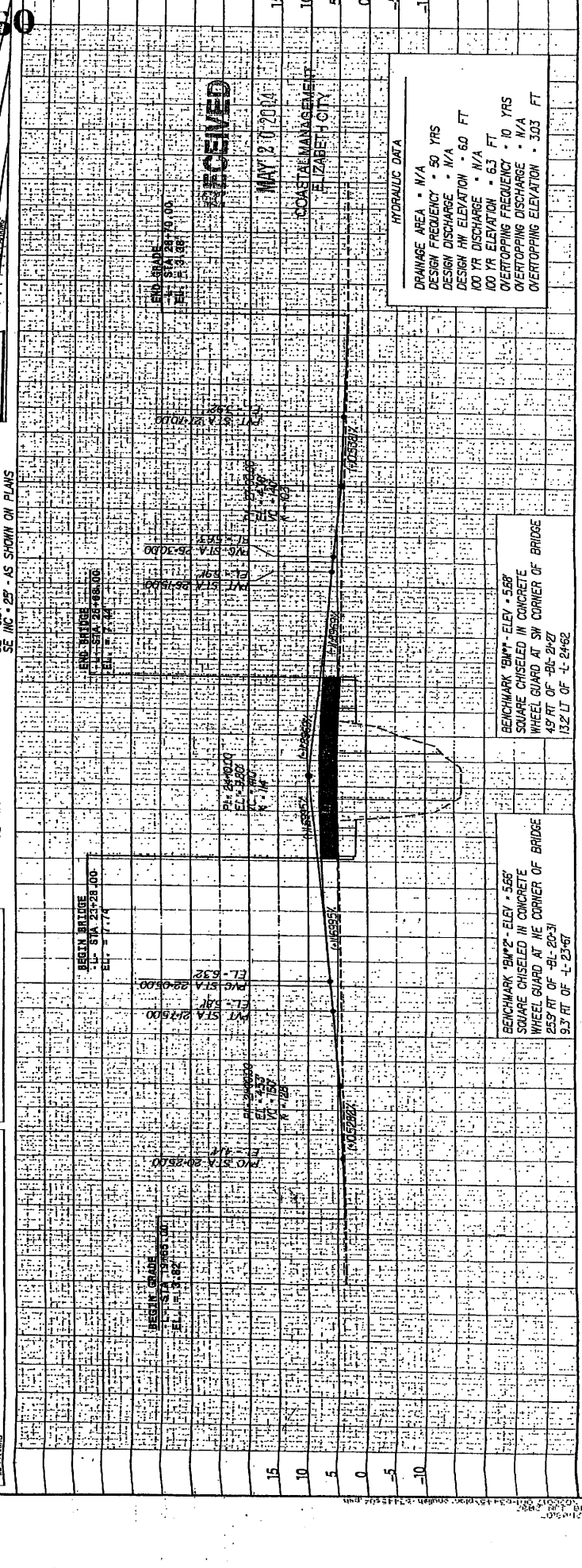
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END STATE PROJECT B-3445
 L-PC STA 27+40.80



END STATE PROJECT B-3445
 L-PC STA 27+40.80




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 MAY 20 2014
 COASTAL MANAGEMENT
 ELIZABETH CITY

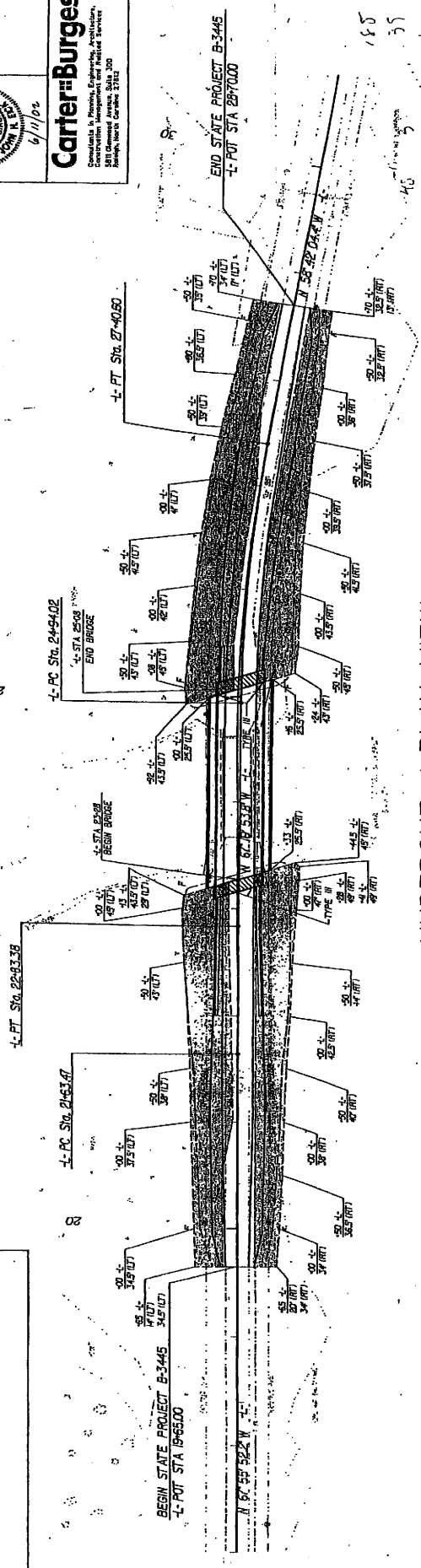
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 COASTAL MANAGEMENT
 ELIZABETH CITY

19	20	21	22	23	24	25	26	27	28	29	30
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 MAY 20 2014
 COASTAL MANAGEMENT
 ELIZABETH CITY

RECEIVED
 MAY 20 2014
 COASTAL MANAGEMENT
 ELIZABETH CITY

HW. SHEET NO. 161
 LANDWAY DESIGN
 ADVISORY BOARD
 ENGINEER

Carter-Burges
 CONSULTING ENGINEERS
 2000 W. 10th Street, Suite 200
 Elizabeth, NJ 07208
 6/11/02



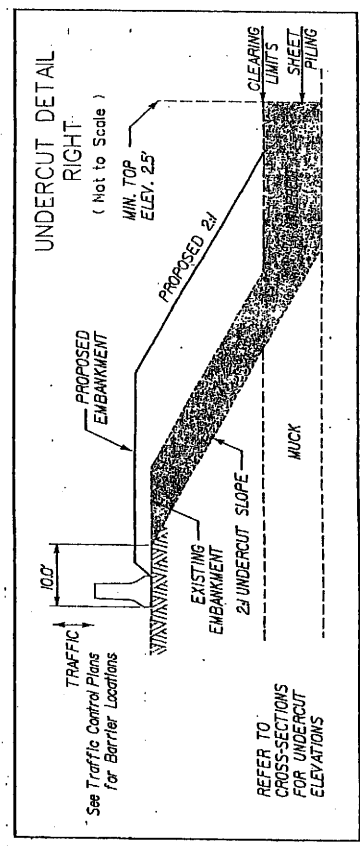
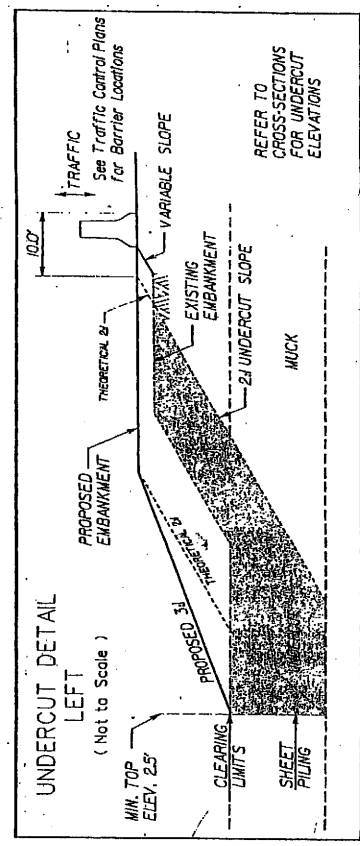
UNDERCUT - PLAN VIEW
 LIMITS OF UNDERCUT

Scale: 1" = 50'

NOTE:
 UNDERCUT LIMITS SHALL NOT EXTEND OUTSIDE
 OF THE LIMITS SHOWN BY STATION AND OFFSET.

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MAY 20 2004
 COASTAL MANAGEMENT
 ELIZABETH CITY

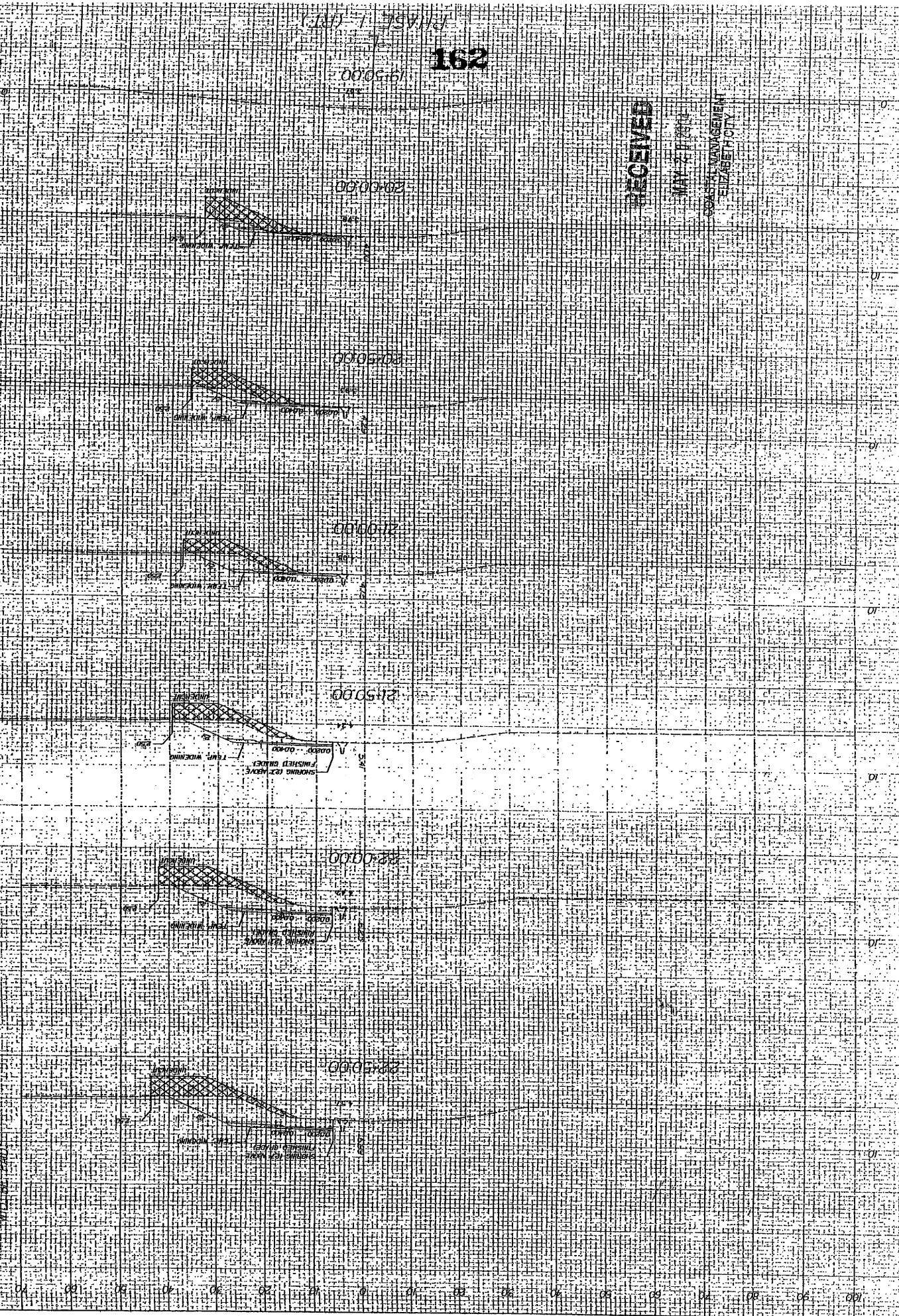


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MAY 21 1994

CITY OF ELIZABETH
STREETS MANAGEMENT
ELIZABETH CITY

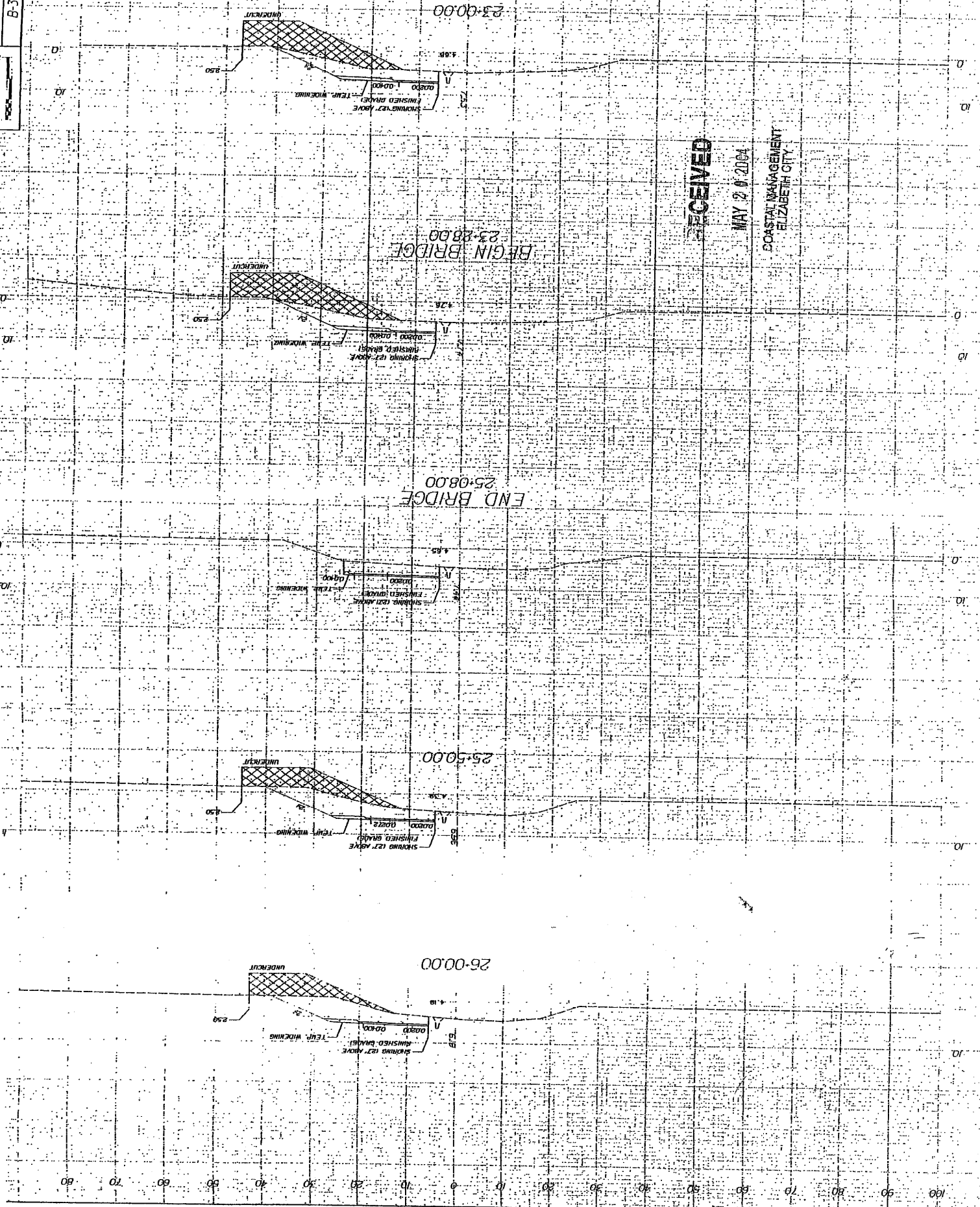
QUANTITIES AND APPROXIMATE COSTS OF STREET ENGINEER
WILL BE SUBMITTED TO THE BOARD OF PUBLIC WORKS FOR REVIEW AND
APPROVAL. THESE QUANTITIES AND COSTS WILL BE USED IN
COMPARING THE FINANCIAL CONSEQUENCES OF EACH OF THE CONTRACTORS
WHICH WILL BE BIDDING.



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B-3445

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PHASE I (RT)



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MAY 20 2004

COASTAL MANAGEMENT
ELIZABETH CITY

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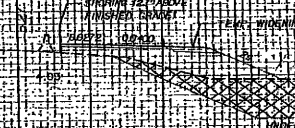
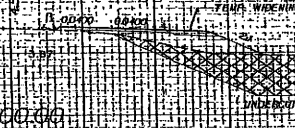
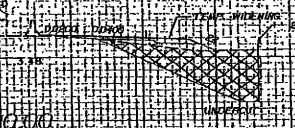
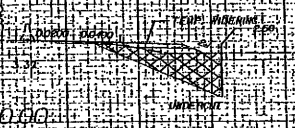
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DISTRICT ENGINEER
PHILADELPHIA

PHASE I (PT.)

PHASE II (T)

165

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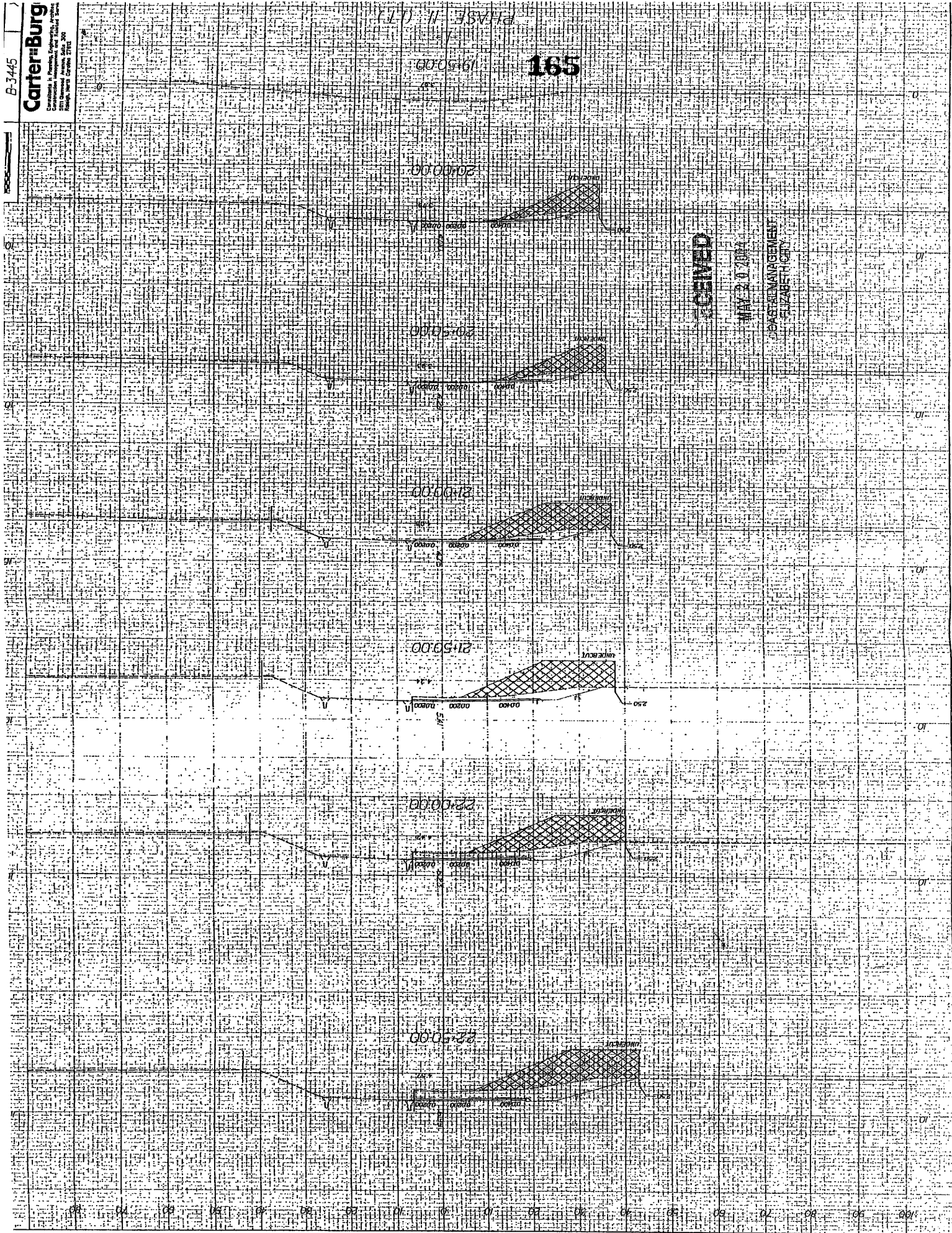
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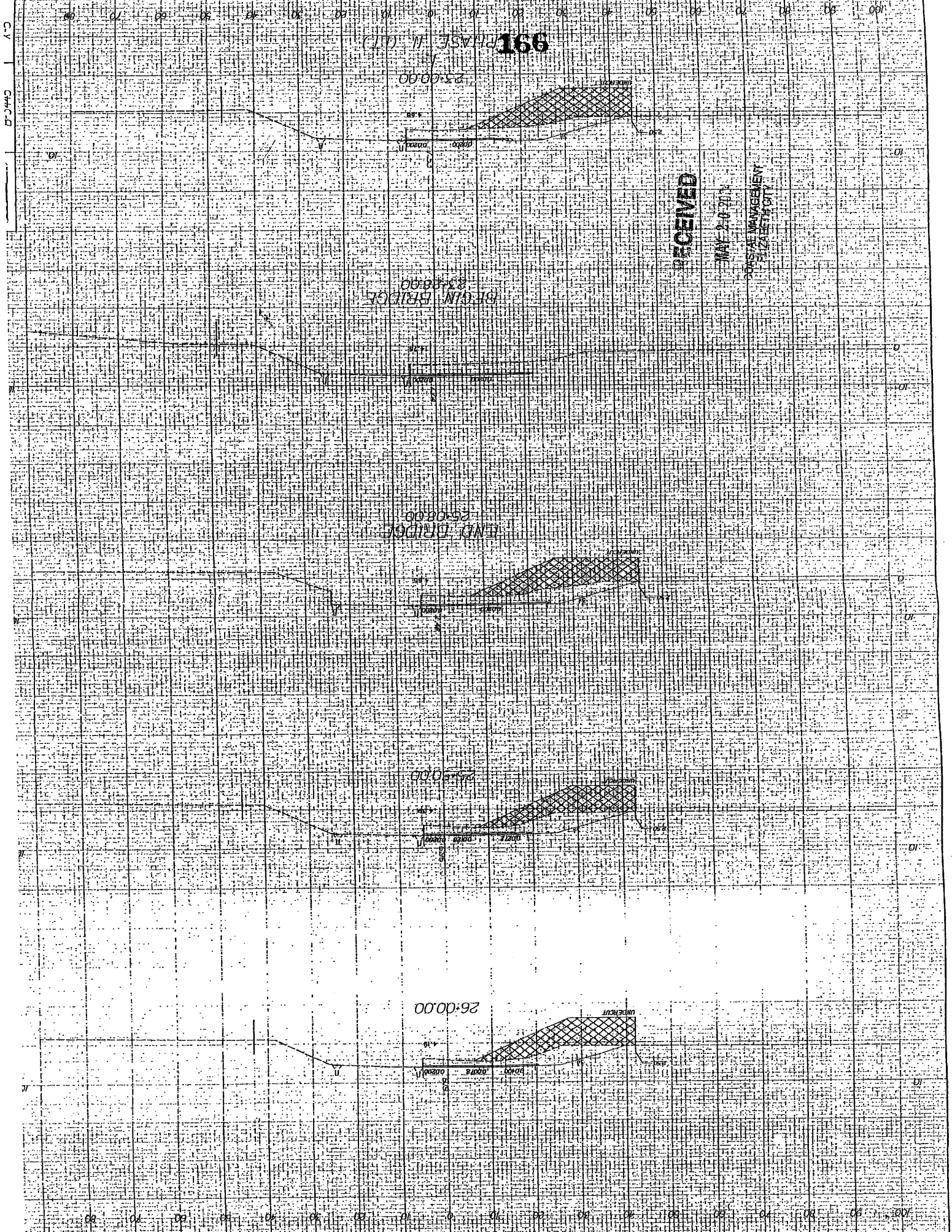
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MAY 20 2008

CONSTRUCTION MANAGEMENT
ELIZABETH CITY





PLEASE REFER TO SHEET 191

23-00.00

START BRIDGE

23-40.00

END BRIDGE

25-00.00

25-50.00

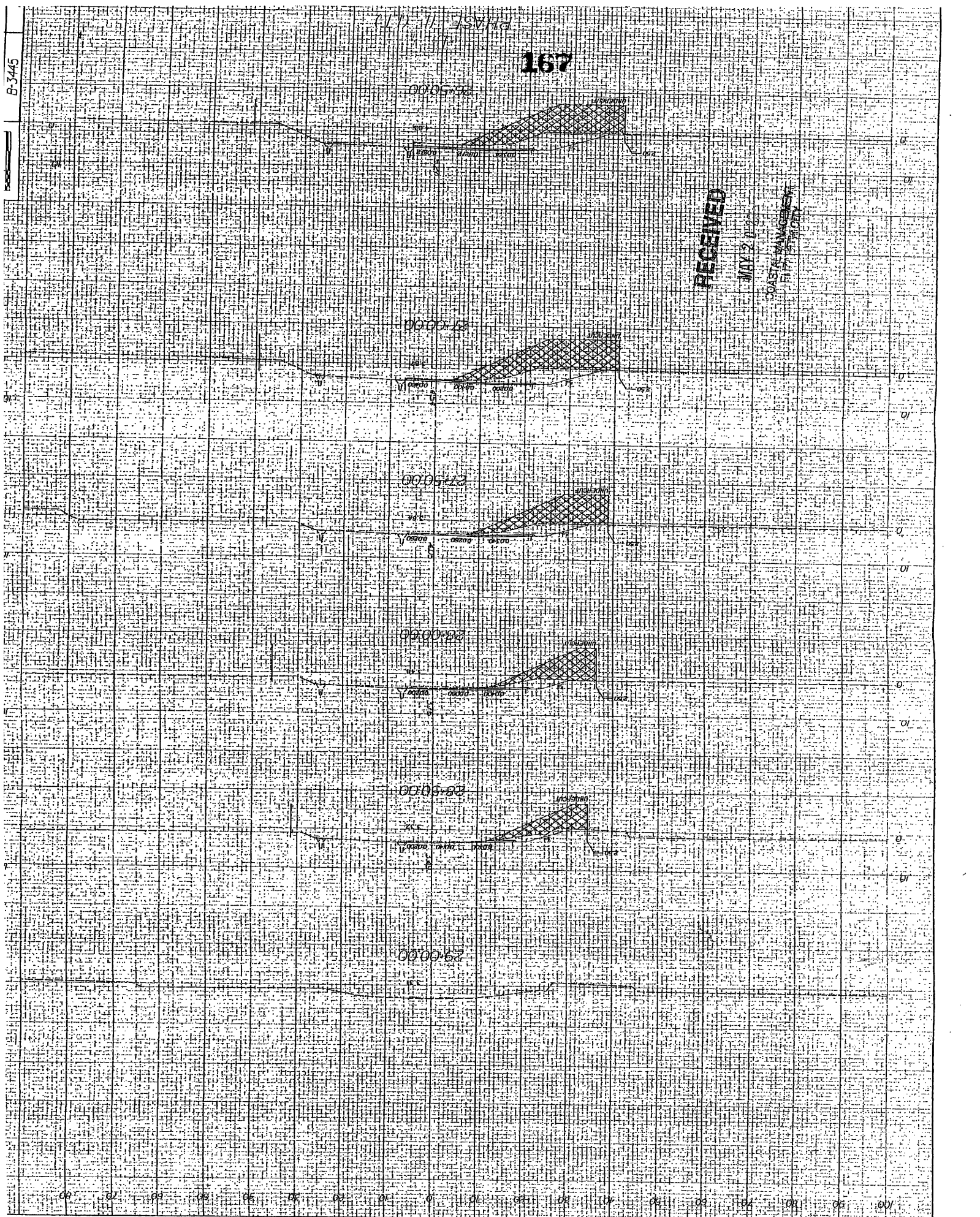
26-00.00

RECEIVED

MAY 20 1971

POSTAL MANAGEMENT
ELIZABETH CITY

167



RECEIVED

MAY 2 1959

COASTAL MANAGER'S
FIRM'S OFFICE

CHASE III (R1)

168

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22:00:01

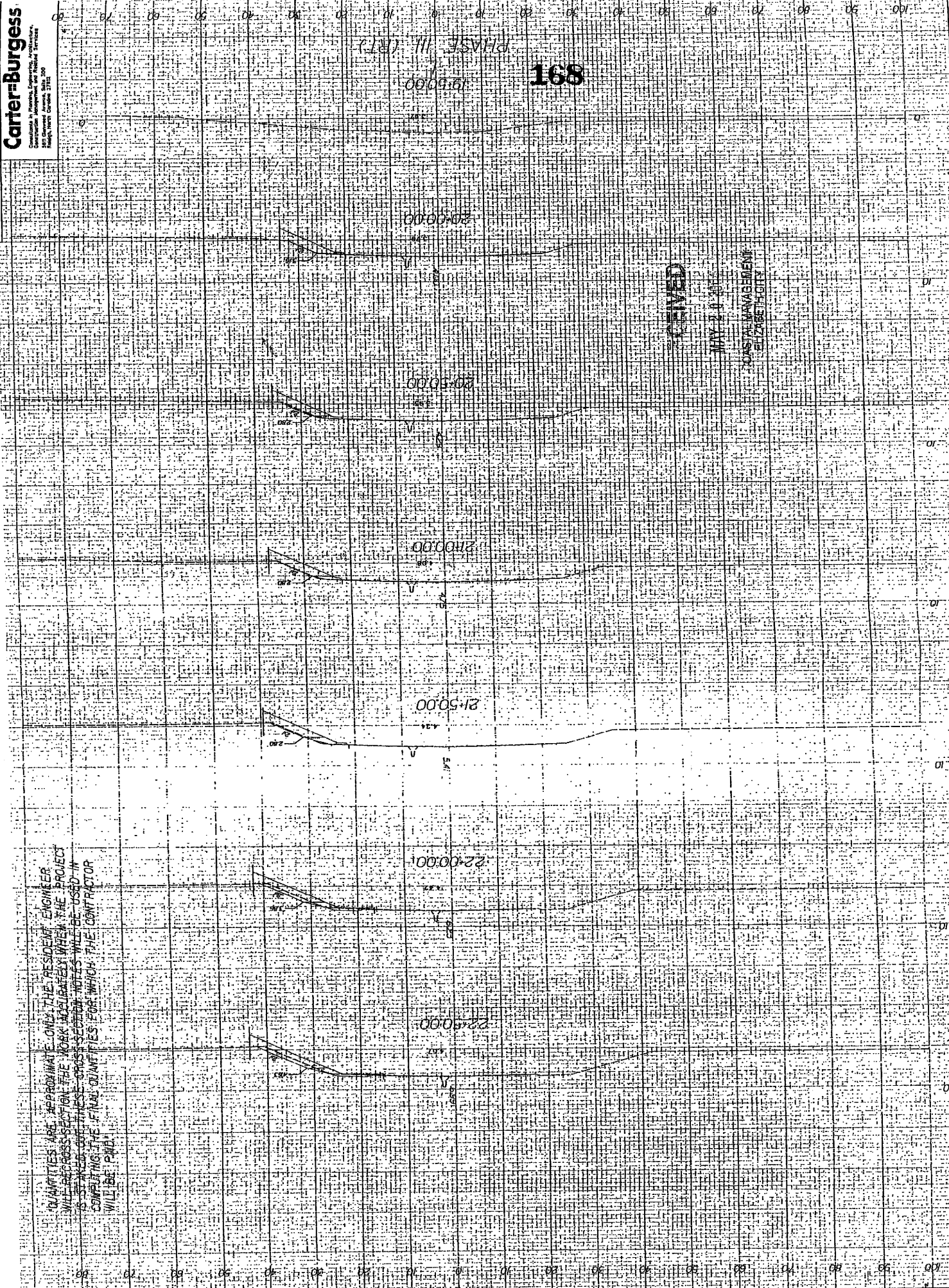
22:40:00

GRAVEL

MAY 21 2011

CONSTANT MANAGEMENT
ELIZABETH CITY

QUANTITIES ARE APPROXIMATE ONLY. THE RESIDENT ENGINEER
WILL RECORD SECTION THE WORK ACCURATELY WHEN THE PROJECT
IS STAKED OUT. THESE CROSS SECTION NOTES WILL BE USED IN
COMPLETING THE FINAL QUANTITIES FOR WHICH THE CONTRACTOR
WILL BE PAID.



PHASE III (RT)

169

23+00.00

BEGIN BRIDGE
23+28.00

END BRIDGE
25+08.00

25+50.00

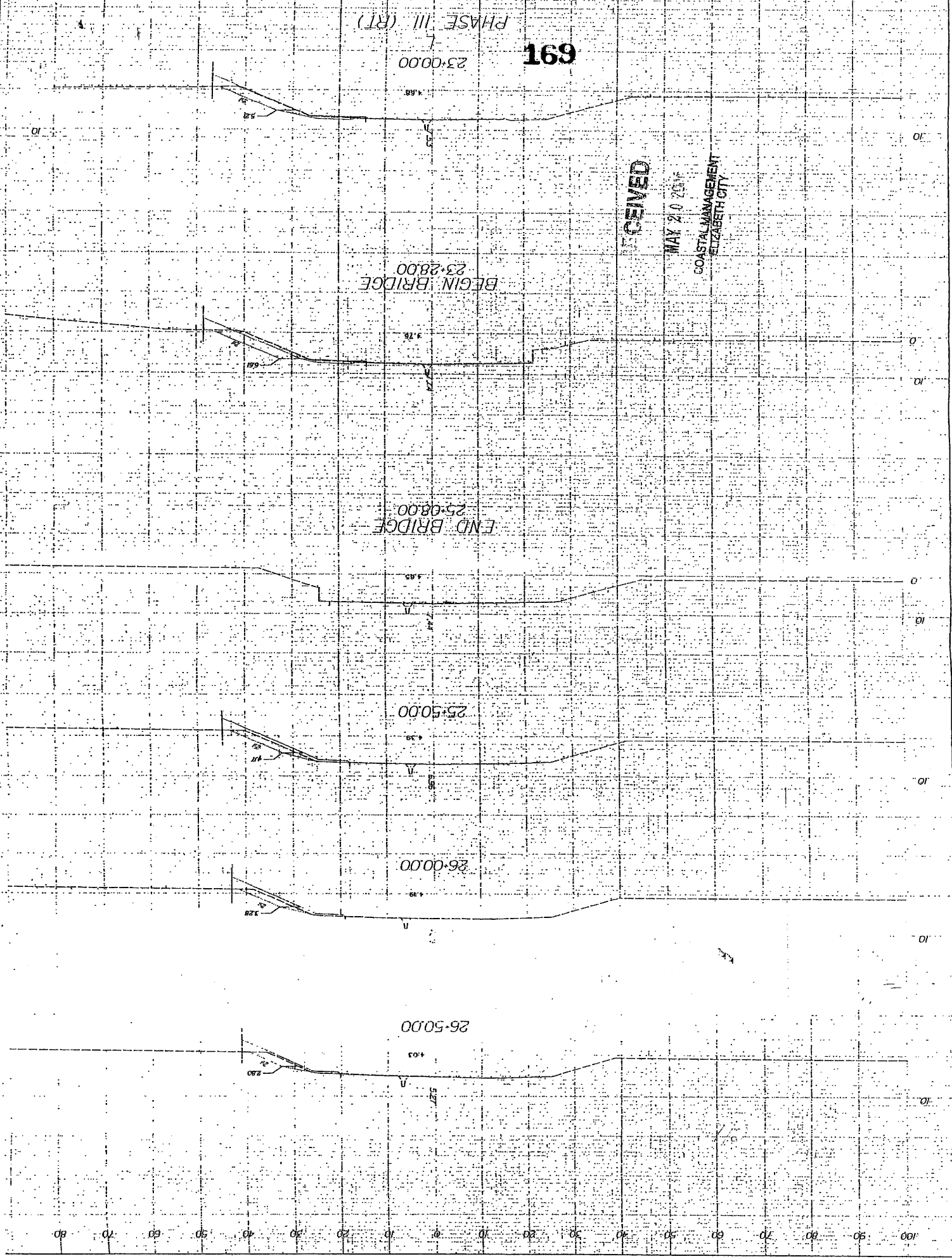
26+00.00

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CEIVED

MAY 21 2009

COASTAL MANAGEMENT
ELIZABETH CITY



170

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W. OF COASTAL MARIAGE
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COASTAL MARIAGE
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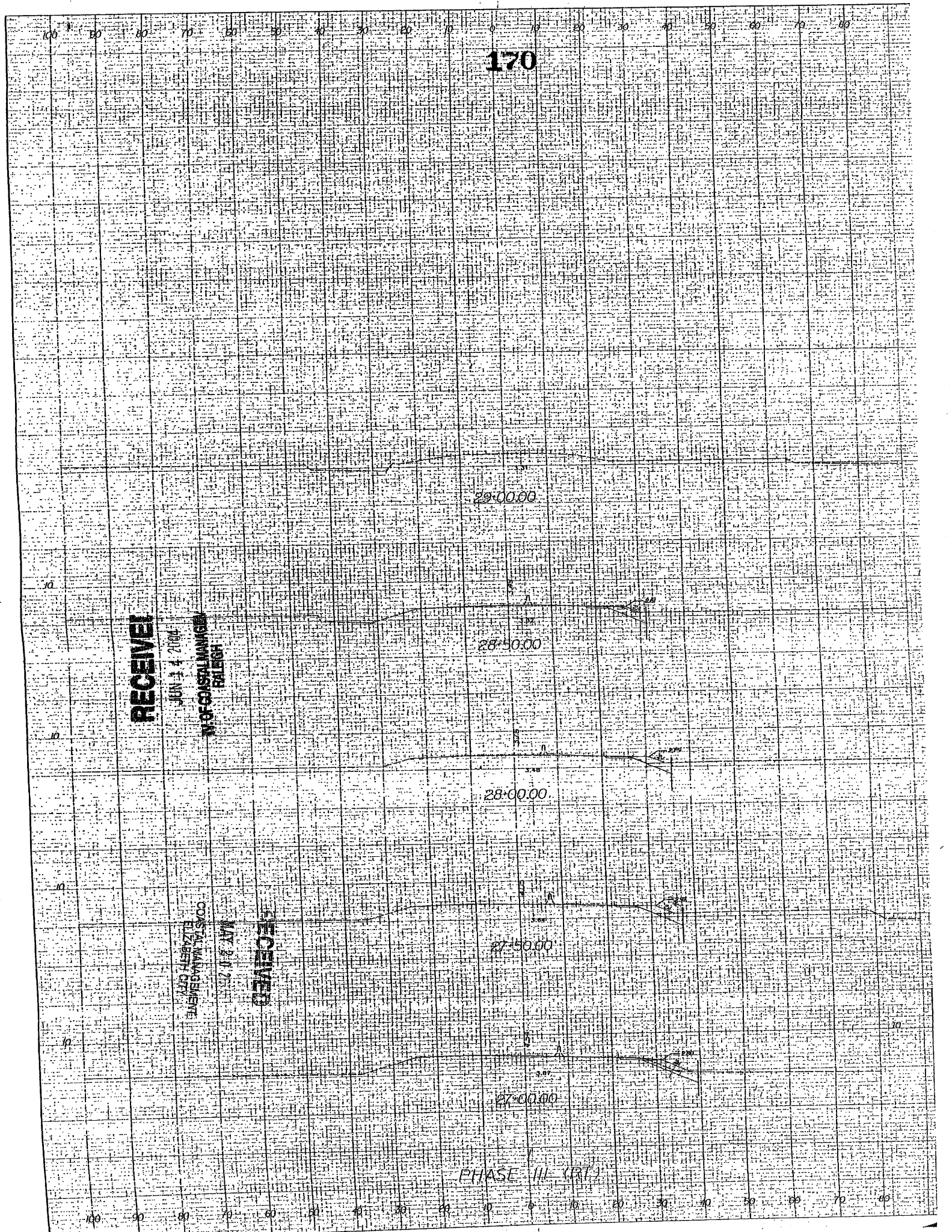
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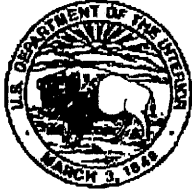
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PHASE III (RT)



171**United States Department of the Interior****FISH AND WILDLIFE SERVICE**1875 Century Boulevard
Atlanta, Georgia 30345In Reply Refer To:
FWS/R4/RF/RE**AUG 18 2003**LA-North Carolina
Mackay Island NWR
(R5) North Carolina DOTMr. W. Kirby Warick, Right-of-Way Agent II
North Carolina Department of Transportation
Right-of-Way Division
Raleigh, North Carolina 27699-1546

Dear Mr. Warick:

This letter acknowledges receipt of check number 1463724 in the amount of \$200.00 for a right-of-way to replace and enlarge an existing bridge along State Road 615 within the Mackay Island National Wildlife Refuge.

Enclosed is an executed permit and a Certificate of Completion of Construction form to be filled out and returned to this office upon completion of the permit.

If you need further assistance, please call Jackie Cumpston at (404) 679-7160.

Sincerely your,

Thomas F. Follrath
Chief, Division of Realty

Enclosures (2)

BR 172 PG 0 8 5 9



Doc ID: 000256020006 Type: CRP
Recorded: 03/05/2004 at 02:14:39 PM
Fee Amt: \$20.00 Page 1 of 8
Currituck County, NC
Charlene V Dowdy Register of Deeds

210

BK 754 PG 859-864

LA - North Carolina
Mackay Island NWR
(R5)NC DOT

Prepared by: NC DOT, 230 NC 42 West, Ahsokie, NC 27910

NORTH CAROLINA EXCISE STAMPS

PERMIT

ATTACHED AND CANCELLED # NONE

For 53,496 square feet of right-of-way for the purpose of replacing and enlarging an existing bridge known as Corey's Bridge #7 along State Road 615 within Mackay Island National Wildlife Refuge. This bridge is the only access to a portion of the Mackay Island National Wildlife Refuge

NOW THEREFORE, THE SECRETARY OF THE INTERIOR, through his authorized representative, the Regional Director, U. S. Fish and Wildlife Service, in accordance with applicable authorities, in accordance with regulations published September 30, 1977, in 50 CFR 29.21, and in consideration of the sum of Two Hundred Dollars and No/100 (\$200.00) does hereby grant a right-of-way permit (permit) to the North Carolina Department of Transportation, herein referred to as the **PERMITTEE**, to use and occupy certain lands of Mackay Island National Wildlife Refuge for the purpose of 53,496 square feet of right-of-way for a period of 50 years, or so long as it is used for the purpose granted, commencing on 15th day of August, 2003.

The said right-of-way is described on Exhibit "A" attached hereto and made a part hereof.

By accepting this right-of-way permit, the permittee agrees to the following terms and conditions and special stipulations (where indicated the term "project" or "refuge manager" refers to Mackay Island National Wildlife Refuge or the manager in charge of the facility.).

- (1) To comply with State and Federal laws applicable to the project within which the permit is granted, and to the lands which are included in the permit area and lawful existing regulations thereunder.
- (2) To clear and keep clear the lands within the permit area to the extent and in the manner directed by the project manager in charge; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the project in such a manner as to decrease the fire hazard and also in accordance with such instructions as the project manager may specify.
- (3) To prevent the disturbance or removal of any public land survey monument or project boundary monument unless and until the permittee has requested and received from the Regional Director approval of measures the permittee will take to perpetuate the location of aforesaid monument.
- (4) To take such soil and resource conservation and protection measures, including weed control on the land covered by the permit as the project manager in charge may request.
- (5) To do everything reasonably within its power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near lands to be occupied under the permit areas, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires.

TRANSFER TAX AMOUNT NONE J.W.
DATE/COLLECTOR 3-5-2004

BK 0754 PG 0861

173

NCDOT Right-of-Way Permit - R5 - Mackay Island NWR

2

(6) To rebuild and repair such road, fences, structures, and trails as may be destroyed or injured by construction work and, upon request by the Regional Director, to build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained, or operated under the permit.

(7) To pay the United States the full value for all damages to the lands or other property of the United States caused by its employees, contractors, or agents of the contractors, and to indemnify the United States against any liability for damages to life, person, or property arising from the occupancy or use of the lands under the permit, except where the permit is granted hereunder to a State or governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property; such agency in lieu thereof agrees to repair all such damages. Where the permit involves lands which are under the exclusive jurisdiction of the United States, the holder or its employees, contractors, or agents of the United States, the holder or his employees, contractors, or agents of the contractors, shall be liable to third parties for injuries incurred in connection with the permit area. Grant of permits involving special hazards will impose liability without fault for injury and damage to the land and property of the United States up to a specified maximum limit commensurate with the foreseeable risks or hazards presented. The amount of no-fault liability for each occurrence is hereby limited to no more than \$1,000,000.

(8) To notify promptly the project manager in charge of the amount of merchantable timber, if any, which will be cut, removed, or destroyed in the construction and maintenance of the project, and to pay the United States in advance of construction such sum of money as the project manager may determine to be the full stumpage value of the timber to be so cut, removed, or destroyed.

(9) That all or any part of the permit granted may be suspended or terminated by the Regional Director for failure to comply with any or all terms and conditions of the grant, or for abandonment. A rebuttable presumption of abandonment is raised by deliberate failure of the holder to use for any continuous two-year period the permit for the purpose for which it was granted or renewed. In the event of noncompliance or abandonment, the Regional Director will notify in writing the holder of the permit of his intention to suspend or terminate such grant 60 days from the date of the notice, stating the reasons therefor, unless prior to that time the holder completes such corrective actions as are specified in the notice. The Regional Director may grant an extension of time within which to complete corrective actions when, in his judgement, extenuating circumstances not within the holder's control such as adverse weather conditions, disturbance to wildlife during breeding periods or periods of peak concentration, or other compelling reasons warrant. Should the holder of a right-of-way issued under authority of the Mineral Leasing Act, as amended, fail to take corrective action within the 60-day period, the Regional Director will provide for an administrative proceeding pursuant to 5 U.S.C. 554, prior to a final Departmental decision to suspend or terminate the permit. In the case of all other right-of-way holders, failure to take corrective action within the 60-day period will result in a determination by the Regional Director to suspend or terminate the permit. No administrative proceeding shall be required where the permit terminates under its terms.

(10) To restore the land to its original condition to the satisfaction of the Regional Director so far as it is reasonably possible to do so upon revocation and/or termination of the permit, unless this requirement is waived in writing by the Regional Director. Termination also

BK 0754 PG 0862

174

NCDOT Right-of-way Permit - R5 - Mackay Island NWR

3

includes permits that terminate under the terms of the grant.

(11) To keep the project manager informed at all times of its address, and in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers.

(12) That in the construction, operation, and maintenance of the project, he shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts.

(13) That the grant of the permit shall be subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the land affected thereby. The applicant agrees and consents to the occupancy and use by the United States, its grantee, permittee, or lessee of any part of the permit area not actually occupied for the purpose of the granted rights to the extent that it does not interfere with the full and safe utilization thereof by the holder. The holder of a permit also agrees that authorized representatives of the United States shall have the right of access to the permit area for the purpose of making inspections and monitoring the construction, operation and maintenance of facilities.

(14) That the permit herein granted shall be subject to the express covenant that any facility constructed thereon will be modified or adapted, if such is found by the Regional Director to be necessary, without liability or expense to the United States, so that such facility will not conflict with the use and occupancy of the land for any authorized works which may hereafter be constructed thereon under the authority of the United States. Any such modification will be planned and scheduled so as not to interfere unduly with or to have minimal effect upon continuity of energy and delivery requirements.

(15) That the permit herein granted shall be for the specific use described and may not be constructed to include the further right to authorize any other use within the permit area unless approved in writing by the Regional Director.

(16) To sustain from or perform, those activities as required by the U.S. Fish and Wildlife Service in order to comply with the requirements of the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Archeological and Historic Preservation Act of 1974 (16 U.S.C. 469 et seq.), Executive Order 11593 "Protection and Enhancement of the Cultural Environment" of May 13, 1971 (36 FR 8921), and "Procedures for the Protection of Historic and Cultural Properties" (36 FR 800).

(17) Should previously unrecorded cultural resources or human remains be made on Service land, construction activities will be halted immediately at that location. The Regional Archaeologist and the Project Manager are to be contacted at once. Should further archaeological investigations be deemed necessary by the Regional Archaeologist, and the State Historic Preservation Office (SHPO), the Permittee will develop and submit a mitigation plan. Upon approval, the Regional Archaeologist will then process the required Archaeological Resources Protection Act (ARPA) permit.

(18) Should human remains in an unmarked grave be encountered, Refuge Law Enforcement will be contacted immediately in addition to the Regional Archaeologist, the Project Manager, the County Sheriff's Office, and the SHPO. Should the human remains be identified as Native American, then consultation with pertinent Native American groups will be initiated as per

BK 0754 PG 0863

175

NCDOT Right-of-Way Permit - R5 - Mackay Island NWR

4

the Native American Grave Protection and Repatriation Act.

(19) Upon removal of the old bridge, existing steel bulkheads will be left in place. The ends of this bulkheading will be armored with rip-rap down the canal banks approximately 40 feet beginning at the bridge and extending southward along each canal bank to protect the shoreline from further erosion. Additional rip-rap will be placed at the base and in front of the steel bulkheading under the old bridge and out to the north side of the bulkhead. This will reduce the risk of erosion undercutting the bulkhead and will also protect the new bridge abutments.

(20) To enhance sheet flow and reduce some of the hydrologic pressure on Corey's Ditch, additional culverts will be installed underneath the causeway. A total of seven new culverts and two upgrades with a minimum diameter of 36 inches, 48 inches where road elevations permit, will be installed as identified on the attached map. Specific locations may be adjusted to accommodate the largest pipes based upon the site. Culverts are to be constructed from corrugated arched pipe and must be stabilized on each end with rip-rap. The Refuge Manager also recommends that the two existing pipes at the east end of the Causeway, which are only partially on the refuge, be replaced with similar sized culverts (36" arched pipe or larger). Currently, these pipes are 24 inch round pipes and are beginning to deteriorate. The specific size and location of the pipes will be approved by the Refuge Manager in coordination with NCDOT.

(21) No in water work will be conducted during the North Carolina Wildlife Resource Commission moratorium for fisheries resources, March 31 through September 30 of each year.

(22) Best Management Practices (BMP) for Bridge Demolition and Removal, BMP for the Protection of Surface Waters will be implemented, and the USFWS construction guidelines regarding manatee habitat will be utilized.

(23) Wetlands will not be used for borrow or waste areas outside of what is described in the existing plans.

(24) A Stormwater Management Permit will be obtained from the NC Division of Water Quality for the operation of the permanent drainage easement.

(25) No material will be disposed of by burning on refuge property.

(26) NCDOT or their designee/representative will be responsible for posting and maintaining signage regarding the closure of the construction area to all recreational activity. NCDOT or their designee/representative will post signs as recommended by the Refuge Manager.

(27) Upon project completion all construction debris will be removed from the site to the satisfaction of the Refuge Manager.

(28) Upon project completion, the area within the right-of-way will be restored to its original contours and elevations including but not limited to the plant community that existed prior to construction.

(29) Upon project completion, NCDOT will contact the Refuge Manager for a final inspection and approval. Corrective action will be required by NCDOT for problem resolution relative to non-compliance with permit conditions or other project related actions with potential for detriment to refuge lands not acceptable to Refuge Manager.

RK 0754 PG 0864
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NCDOT Right-of-way - R5- Mackay Island NWR

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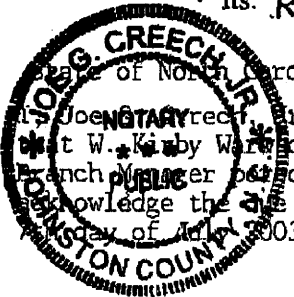
IN WITNESS WHEREOF, I J B Williamson Jr have executed this instrument on behalf of the permittee herein on this 7th day of JULY, 2003.

North Carolina
Department of Transportation

W. P. ...
Witness

By: J B Williamson Jr
Its: RIGHT OF WAY BRANCH
MANAGER
State of North Carolina County of Johnston

Joe S Creech Jr
Notary Public
my COMMISSION EXPIRES
SEPTEMBER 8, 2007



I, a Notary Public for Johnston County, NC, at W. Kirby Warwick and J. B. Williamson, Jr., Right of Way Branch Manager personally came before me this day and acknowledge the due execution of the foregoing instrument this 7th day of July, 2003

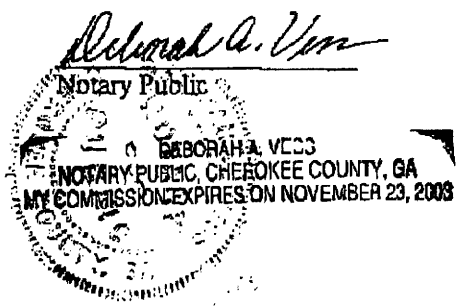
IN WITNESS WHEREOF, I have hereunto set my hand this 15th day of August, 2003.

THE UNITED STATES OF AMERICA

Laura Maloof
Witness

By: J M King
Regional Director
U.S. Fish and Wildlife Service

State of Georgia County of Cherokee
I Deborah A. Vess a Notary Public for Cherokee County, GA, certify that Laura Maloof and J. M. King, Regional Director US Fish and Wildlife Service personally came before me this day and acknowledge the due execution of the foregoing instrument this 15th day of August 2003



NORTH CAROLINA, CURRITUCK COUNTY

The foregoing certificate(s) of Joe S Creech Jr, Notary of Johnston Co, NC and Deborah A Vess, Notary of Cherokee Co, GA is (are) certified to be correct. This instrument was presented for registration at 2:14:39 o'clock PM on March 5 20 04, and recorded in Book 754, Page 859.

Charlene Y Overby
Register of Deeds
By: Angelia K Sidle
Assistant Register of Deeds

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LA-North Carolina
Mackay Island NWR
(R5) NC DOT

CERTIFICATE OF COMPLETION OF CONSTRUCTION

✱This is to certify that all work in connection with the permit issued by the U. S. Fish and Wildlife Service to replace and enlarge an existing bridge known as "Corey's Bridge #7" along State Road 615 within Mackay Island National Wildlife Refuge, North Carolina, granting the North Carolina Department of Transportation a right-of-way, was completed on

**NORTH CAROLINA DEPARTMENT OF
TRANSPORTATION**

Date: _____

By: _____

Title: _____

Exhibit ¹⁷⁸ "A" 840754 PG 0860

U. S. Department of Interior
 U. S. Fish and Wildlife Service
 Mackay Island National Wildlife Refuge
 State Project 8.1040601; TIP B-3445
 Parcel 001 - Currituck County

Description of Area Permanent R/W Easement #1

Starting on Survey Line -L- POS 19+50.00 thence S22°04'08"W 25.00 feet to Point "1", the point of beginning, on the existing right of way limits. Thence along the new right of way S22°04'08"W 20.00 feet to Point "2". Thence N70°19'31"W 240.33 feet to Point "3". Thence N67°33'54"W 93.83 feet with an ARC of 93.83R feet and a Radius of 11404.1559 feet to point "4". Thence N67°19'54"W 210.64 feet to Point "5". Thence N63°43'37"W 212.76 feet with an ARC of 212.90R feet and a Radius of 1692.0223 feet to Point "6". Thence N55°42'33"W 181.61 feet to Point "7". Thence N31°17'56"E 20.00 feet to point "8" on the existing right of way. Thence along the existing right of way S58°42'03"E 156.49 feet to Point "9". Thence S69°19'00"E 267.45 feet with an ARC of 267.74L feet and a Radius of 1662.0223 feet to Point "10". Thence S67°55'52"E 510.00 feet to point to point "1" the point of beginning and continuing approximately 25256 Squire feet in new right of way.

Description of Area Permanent R/W Easement #2

Starting on Survey Line -L- POS 19+50.00 thence N22°04'08"E 25.00 feet to Point "14", the point of beginning on the existing right of way. Thence along the existing right of way N67°55'52"W 510.00 feet to Point "17". Thence N69°18'58"W 259.41 feet with an ARC of 259.69R feet and a Radius of 1612.0223 feet to Point "18". Thence N58°42'04"W 156.50 feet to point "19". Thence along the new right of way N31°17'56"E 20.00 feet to Point "20". Thence S61°50'05"E 227.25 feet to point "21". Thence S66°56'29"E 319.54 feet to point "22". Thence S65°28'29"E 374.71 feet to point "23". Thence S22°04'08"W 20.00 feet to point "14", the point of beginning and continuing approximately 28240 Squire feet in new right of way

The above areas are as depicted on that survey entitled "State of NORTH CAROLINA, DEPARTMENT OF TRANSPORTATION, MAP OF PROPOSED RIGHT OF WAY, UNITED STATES DEPARTMENT OF INTERIOR, CURRITUCK COUNTY. Being further identified as PSD 141-02-RW, TIP B-3445, Project 8.1040601, Par. 001. Revised 12/20/2002.

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