

## **DEPARTMENT OF THE ARMY**

U.S. ARMY CORPS OF ENGINEERS, WILMINGTON DISTRICT
WRDA/TRANSPORTATION BRANCH
2407 WEST 5TH STREET
WASHINGTON NORTH CAROLINA 27889

August 6, 2025

Regulatory Division SAW-2020-00222

Sent Via email: tmherndon@ncdot.gov

Mason Herndon NCDOT-Division 3 5501 Barbados Blvd Castle Hayne, NC 28429

Dear Mr., Herndon:

This letter is in response to the Pre-Construction Notification (PCN) you submitted to the Wilmington District, WRDA/Transportation Branch on July 29, 2025, for a Department of the Army Nationwide permit (NWP) verification. This project has been assigned the file number SAW-2020-00222 and is known as NCDOT\_HB-0039 Bridge 13 US 76/421/17/17Business Cape Fear Memorial Bridge Cape Fear River Division 3. This file number should be referenced in all correspondence concerning this project.

A review of the information provided indicates that the proposed work would include the subsurface geotechnical borings. The project area for this determination includes approximately 50-acre area which is illustrated on the submitted site plans/maps. The project/review area is located adjacent to the Cape Fear Memorial Bridge over the Cape Fear River, at Latitude 34.228720 and Longitude -77.952350; in Wilmington, New Hanover County, North Carolina.

We have determined that the proposed work is authorized by Nationwide Permit 6 pursuant to authorities under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. § 403) and Section 404 of the Clean Water Act (33 U.S.C. § 1344). The proposed work must be accomplished in strict accordance with the general permit conditions, any regional conditions, the special conditions listed in this letter, the application materials, and the enclosed plans. If the extent of the project area and/or nature of the authorized impacts to waters are modified, a revised PCN must be submitted to this office for written approval before work is initiated. Any violation of permit conditions or deviation from your submitted plans may subject the permittee to enforcement action.

This verification is valid until March 14, 2026, unless prior to this date the subject NWP(s) is suspended, revoked, or is modified such that the activity no longer complies with the terms and conditions of this NWP. If you commence or are under contract to commence this activity before the date that the relevant NWP is modified or revoked,

you will have 12 months from the date of the modification or revocation of the NWP to complete the activity under the present terms and conditions of this NWP.

# **Project Specific Special Conditions:**

- 1. This verification allows subsurface geotechnical borings to be completed as per the boring plan submitted with the PCN dated July 29, 2025. However, no boring or associated work may take place on any property or Federal Real Estate associated with the USACE Engineer Yard located on Eagle Island or any parcels dedicated to the Eagle Island Nature preserve. Borings will not occur on these locations until access rights have been granted by the appropriate agencies.
- 2. Temporary Impacts Restoration Measures: Within thirty (30) days of the date of completing the authorized work, the Permittee shall remove all temporary fills in waters of the United States and restore the affected areas to pre-construction contours and elevations. The affected areas shall be re- vegetated with native, non-invasive vegetation as necessary to minimize erosion and ensure site stability. In wetland areas where matting is proposed, cleared wetland areas shall be re-vegetated with a wetland seed mix or a mix of native woody species. Fescue grass or any invasive species such as Lespedeza spp., shall not be used within the wetland areas.
- 3. In-water Moratorium: No in water work will occur between February 1 to September 30. This covers Primary Nursery Area, Anadromous Fish and Sturgeon moratoriums. Bores conducted within the Cape Fear River will occur outside of these dates.
- 4. Northern long-eared bat The USFWS has issued a programmatic biological opinion (PBO) in conjunction with the Federal Highway Administration (FHWA), the US Army Corps of Engineers (USACE), and NCDOT for the northern longeared bat (NLEB) (Myotis septentrionalis) in eastern North Carolina. The PBO covers the entire NCDOT program in Divisions 1-8, including all NCDOT projects and activities. Although this programmatic covers Divisions 1-8, The USFWS only considers NLEBs to be known or potentially found in 30 counties within Divisions 1-8. NCDOT, FHWA, and USACE have agreed to two conservation measures which will avoid/minimize mortality of NLEBs. These conservation measures only apply to the 30 current known/potential counties shown on Figure 2 of the PBO at this time. The programmatic determination for NLEB for the NCDOT program is May Affect, Likely to Adversely Affect. The PBO will ensure compliance with Section 7 of the Endangered Species Act for ten years (effective through December 31, 2030) for all NCDOT projects with a federal nexus in Divisions 1-8, which includes Brunswick and New Hanover counties where HB-0039 is located.

# 5. Tricolored bat

- The USFWS has issued a programmatic conference opinion (PCO) in conjunction with the Federal Highway Administration (FHWA), the US Army Corps of Engineers (USACE), and NCDOT for the tricolored bat (TCB) (Perimyotis subflavus) in eastern North Carolina. The PCO covers the entire NCDOT program in Divisions 1-8, including all NCDOT projects and activities. NCDOT, FHWA, and USACE have agreed to three conservation measures (listed in the PCO) which will avoid/minimize take to TCBs. These conservation measures apply to all counties in Divisions 1-8. The programmatic determination for TCB for the NCDOT program is May Affect, Likely to Adversely Affect. Once the TCB is officially listed, the PCO will become the programmatic biological opinion (PBO) by formal request from FHWA and USACE. The PBO will ensure compliance with Section 7 of the ESA for approximately five years (effective through December 31, 2028) for all NCDOT projects with a federal nexus in Divisions 1-8, which includes Craven County, where R-5777C is located, conditions of its PBO, and with the ESA.: Tri-colored bat - No tree clearing will occur within 150 feet of a known maternity roost tree May 1 - July 31 in order to protect non-volant young. Winter roost trees are not considered maternity roost trees. NCDOT will cross-reference information given by USFWS on the locations of maternity roosts (as they are discovered) to stay in compliance with this condition.
- 6. Section 408: "It has been determined that the activities authorized do not impair the usefulness of the USACE project and are not injurious to the public interest." Regulatory staff must also incorporate into the permit the terms and conditions in Appendix A. (attached).

This NWP verification does not preclude the necessity to obtain any other Federal, State, or local permits, licenses, and/or certifications, which may be required.

If you have any questions related to this verification or have issues accessing documents referenced in this letter, please contact Thomas Steffens, Project Manager of the WRDA/Transportation Branch at 910-251-4615, by mail at the above address, or by email at thomas.a.steffens@usace.army.mil.

Please take a moment to complete our customer satisfaction survey located at https://regulatory.ops.usace.army.mil/customer-service-survey/.

Sincerely,

M. Scott Jones, PWS

WRDA/Transportation Branch

**Enclosures** 

Cc (w/enclosures)
Mason Herndon, NCDOT-Division 3 (via tmherndon@ncdot.gov)

# U.S. Army Corps of Engineers (USACE)

# CERTIFICATION OF COMPLIANCE WITH DEPARTMENT OF THE ARMY PERMIT

For use of this form, see Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research, and Sanctuaries Act; the proponent agency is CECW-COR.

Form Approved OMB No. 0710-0003
Expires 2027-10-31

### The Agency Disclosure Notice (ADN)

The Public reporting burden for this collection of information, 0710-0003, is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or burden reduction suggestions to the Department of Defense, Washington Headquarters Services, at <a href="https://www.nc-alex.esd.mbx.dd-dod-information-collections@mail.mil">whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil</a>. Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.

**PURPOSE**: This form is used by recipients of U.S. Army Corps of Engineer Regulatory permits to certify compliance with the permit terms and conditions.

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.

Upon completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the U.S. Army Corps of Engineers, Wilmington District, Regulatory Office.

The certification can be submitted by email at Thomas.a.steffens@usace.army.mil or by mail at the below address:

U.S. Army Corps of Engineers Wilmington District Office

Street Address: 2407 West 5th St

City: Washington North Carolina Zip Code: 27889

	СОМ	PLETED BY THE CO	ORPS		
Corps Action Number:	SAV	SAW-2020-00222			
Permit Type: NW-6					
General Permit Number and Name (if applicable)	: NW-6				
Name of Permittee:	Masor	Mason Herndon			
Project Name: River Division 3	NCDOT_	NCDOT_HB-0039 Bridge 13 US 76/421/17/17Business Cape Fear Memorial Bridge Cape Fear			
Project Location (physical address):					
Wilmington, North Carolina					
PERMITTEE'S CERTIFICATION					
Date Work Started:					
Date Work Completed:					
Enclose photographs showing the completed project (if available).					
l hereby certify that the work authorized by the above referenced permit has been completed in accordance with all of the permit terms and conditions, and that any required compensatory mitigation has been completed in accordance with the permit conditions.					
Name		Date	Signature		

CESAW-PM-D 18 July 2025

# MEMORANDUM FOR RECORD (MFR)

SUBJECT: Section 408 – Cape Fear Memorial Bridge Replacement Geotech Borings, Wilmington Harbor, New Hanover County, North Carolina.

- 1. Federal Project Authority: The proposed action has the potential to affect the Wilmington Harbor Federal Navigation Project, located immediately south of the Cape Fear Memorial Bridge, in Wilmington, New Hanover County, North Carolina (Figure 1). The Wilmington Harbor Project at the project location was originally authorized under the Rivers and Harbor Act of 1930 to a depth of 30 feet as reported in Rivers and Harbors Committee Document # 39, 71st Congress, 2nd Session. The channel at the bridge location was later authorized in the late 1940's as reported in Senate Document 83, 76th Congress, 1st Session. The channel at the bridge location was subsequently authorized under the authority of Section 107, River and Harbor Act of 1962 as reported in Senate Document 114, 87th Congress, 2nd Session.
- 2. Project Description: The Wilmington District received a request from the North Carolina Department of Transportation seeking Section 408 permission to conduct geotechnical work within the Wilmington Harbor Navigation Project. This geotechnical work is associated with the Cape Fear Memorial Bridge replacement project and will involve the drilling of 6 bores within the federal channel using a crane on a barge. The geotechnical borings are the only activity being considered under this request. The Cape Fear Memorial Bridge replacement project has been submitted, and review will continue when the design work, investigations, and compliance with the National Environmental Policy Act have reached appropriate stages. The proposed geotechnical borings will be conducted immediately south of the Cape Fear Memorial Bridge, in Wilmington, New Hanover County, North Carolina (36.63556, -80.26932). Please see Figure 1 for a vicinity map and Figure 2 for project drawings.
- 3. Technical Analysis: The Wilmington District, Navigation Branch (Todd Horton) and Project Management Branch (Ronnie Smith) reviewed the proposed action and have determined that there is no evidence to indicate that the proposed action will have any negative effects on the federal navigation project. The boring work will take 6 weeks to complete, and the equipment and barge will be located along the edges of the federal channel and would not impede navigation and vessel traffic through the channel.
- 4. Public Interest Determination: There are no reasonably foreseeable detriments associated with the proposed action. As a result of a review of the proposed action within the Wilmington Harbor Federal Navigation Project, the USACE Wilmington District has determined that the proposal will not be injurious to the public interest.
- 5. Real Estate: Based on coordination with USACE Savannah District Real Estate, the proposed action within the Wilmington Harbor Federal Navigation Project channel does not involve federal property; therefore, no USACE real estate action is required.

However, some of the proposed geotechnical borings will occur on U.S. Government fee owned property located at 232 Battleship Road, in Wilmington, NC. The requestor is coordinating with Real Estate and Navigation Branch to secure a License prior to working on government property.

6. Environmental Compliance: Comprehensive environmental analysis of the proposed action is being conducted by the USACE Wilmington District, Regulatory Division, associated with permit issuance under Section 10 of the Rivers and Harbors Act. Environmental compliance analysis required for the Section 408 Review of the geotechnical borings in the Cape Fear River will be the same as that required for permit reviews. All environmental requirements will be met through the permit process. Therefore, a separate environmental compliance analysis is not necessary. It is also noted that, this activity may be authorized by a Nationwide Permit (NWP). In accordance with the National Environmental Policy Act of 1969, as amended, comprehensive environmental analysis for the proposed work has already been conducted by the USACE during the adoption of NWP 6 for Survey Activities (<a href="https://saw-reg.usace.army.mil/NWP2021/NWP-6.pdf">https://saw-reg.usace.army.mil/NWP2021/NWP-6.pdf</a>) pursuant to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

Additionally, the geotechnical borings on government fee-owned uplands would be covered under a categorical exclusion at 33 CFR 230.9(i). No additional environmental analysis is required if the activity complies with the requirements of NWP 6 and the terms and conditions in Appendix A.

- 7. The geotechnical boring sites situated within government fee-owned upland property, will be subject to an evaluation prior to the issuance of a license. According to EC 1165-2-220, Para. 9.e., "When a proposed alteration will be carried out entirely within the boundaries of real property of the United States or reservoirs managed by USACE, a separate evaluation under the procedures in this EC is not required, so long as the alteration is . . . subject to a Report and Determination of Availability . . ."
- 8. According to EC 1165-2-220, Appendix G-4, Para. c., "The district staff evaluating impacts to the usefulness of the USACE Navigation project will document their findings in a Memorandum for Record (MFR) that will be provided to the district Regulatory staff for their use in the Section 10 permit evaluation and determination."
- 9. USACE, Wilmington District, Regulatory Division staff must include in the Section 404/Section 10 verification that is provided to the applicant the following acknowledgment: "It has been determined that the activities authorized do not impair the usefulness of the USACE project and are not injurious to the public interest." Regulatory staff must also incorporate into the permit the terms and conditions in Appendix A below.
- 10. Conclusion: Based upon the foregoing, it is my determination that: (1) the proposed action will not be injurious to the public interest, and (2) the proposed action will not impair

the usefulness of the federal project. Therefore, the applicant is hereby granted permission pursuant to Section 408 to conduct geotechnical work within the Wilmington Harbor Federal Navigation Project.

Ronnie Smith

**Encls** 

1. Federal Project Map

2. Project Drawings

Ronnie Smith Section 408 Coordinator Wilmington District

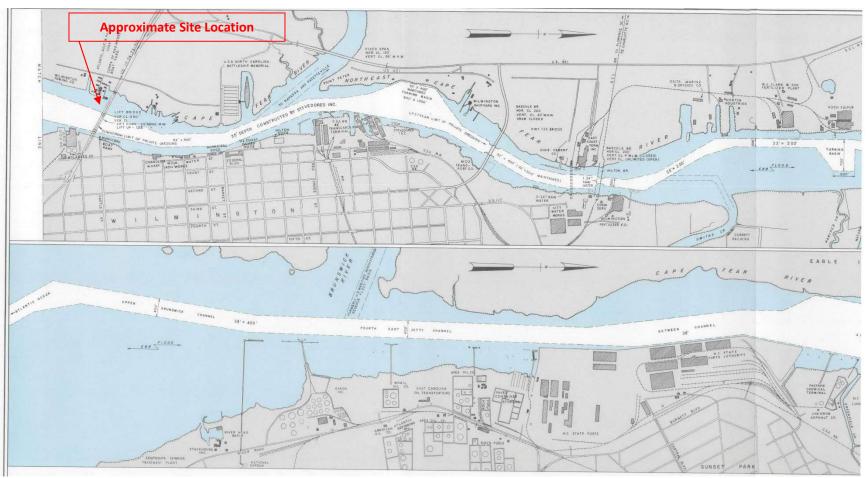


Figure 1: Federal Project Map

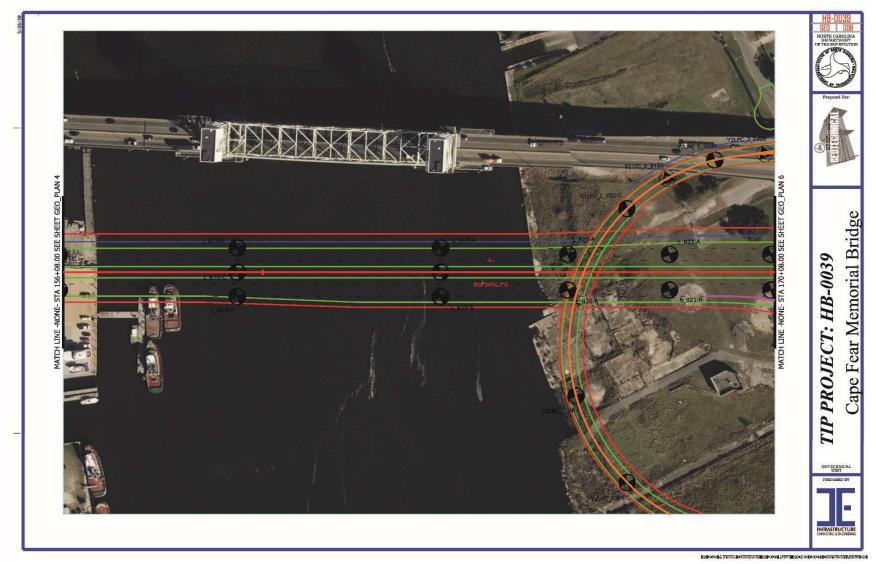


Figure 2: Project Drawing

# Appendix A: Terms and Conditions (Appendix K in EC 1165-2-220)

EC 1165-2-220 10 Sep 18

# Standard Terms and Conditions

This appendix includes the standard conditions that must be included in all Section 408 approval notifications, except where marked as optional. Use of optional conditions should be based on scope and scale of the approved activity:

# LIMITS OF THE AUTHORIZATION

- 1. This permission only authorizes you, the requester, to undertake the activity described herein under the authority provided in Section 14 of the Rivers and Harbors Act of 1899, as amended (33 USC 408). This permission does not obviate the need to obtain other federal, state, or local authorizations required by law. This permission does not grant any property rights or exclusive privileges, and you must have appropriate real estate instruments in place prior to construction and/or installation.
- 2. The time limit for completing the work authorized ends on <u>December 31, 2030</u>. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
- 3. Without prior written approval of the USACE, you must neither transfer nor assign this permission nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this permission. Failure to comply with this condition will constitute noncompliance for which the permission may be revoked immediately by USACE.
- 4. The requester understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration of the work herein authorized, or if, in the opinion of the Secretary of the Army or an authorized representative, said work will cause unreasonable conditions and/or obstruction of USACE project authorized design, the requester will be required upon due notice from the USACE, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim can be made against the United States on account of any such removal or alteration.

# INDEMNIFICATION AND HOLD HARMLESS

5. The United States will in no case be liable for:

- a. any damage or injury to the structures or work authorized by this
  permission that may be caused or result from future operations
  undertaken by the United States, and no claim or right to
  compensation will accrue from any damage; or
- b. damage claims associated with any future modification, suspension, or revocation of this permission.
- 6. The United States will not be responsible for damages or injuries which may arise from or be incident to the construction, maintenance, and use of the project requested by you, nor for damages to the property or injuries to your officers, agents, servants, or employees, or others who may be on your premises or project work areas or the federal project(s) rights-of-way. By accepting this permission, you hereby agree to fully defend, **indemnify**, and **hold harmless** the United States and USACE from any and all such claims, subject to any limitations in law.
- 7. Any damage to the water resources development project or other portions of any federal project(s) resulting from your activities must be repaired at your expense.

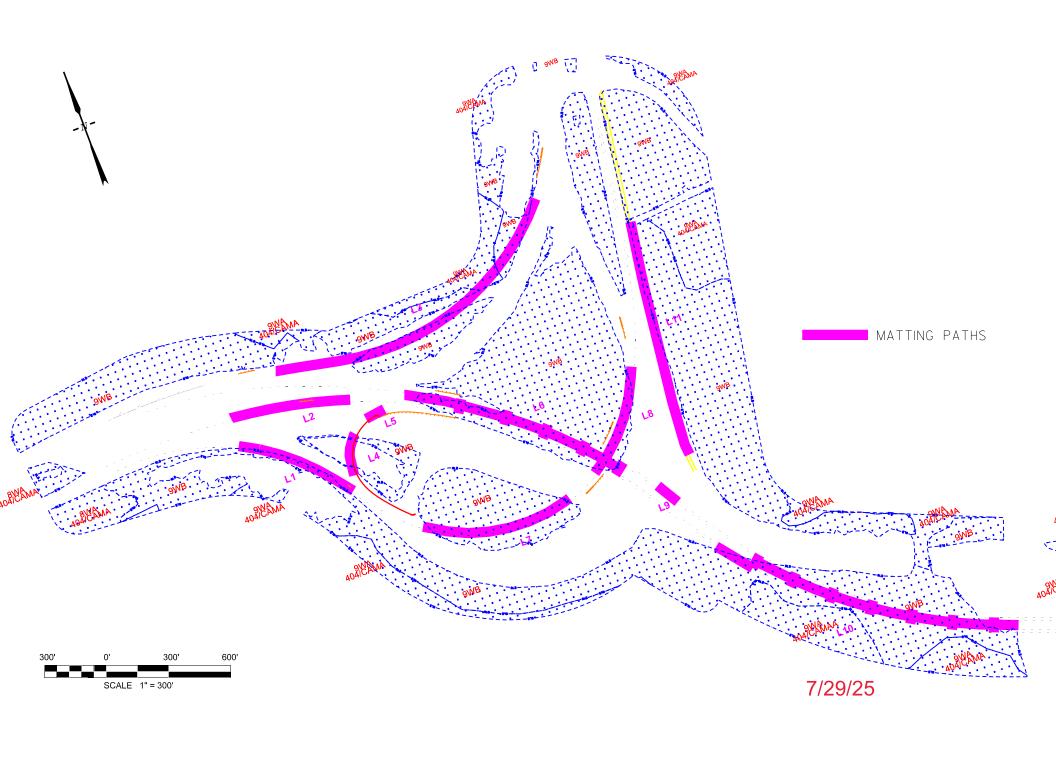
# REEVALUATION OF PERMISSION

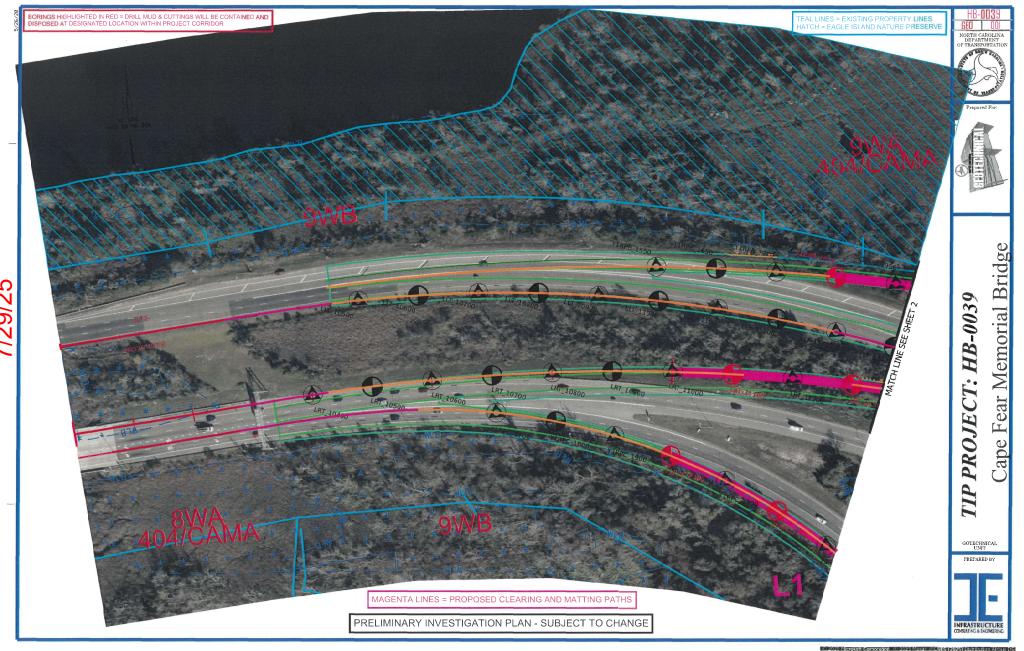
- 8. The determination that the activity authorized by this permission would not impair the usefulness of the federal project and would not be injurious to the public interest was made in reliance on the information you provided.
- 9. This office, at its sole discretion, may reevaluate its decision to issue this permission at any time circumstances warrant, which may result in a determination that it is appropriate or necessary to modify or revoke this permission. Circumstances that could require a reevaluation include, but are not limited to, the following:
  - a. you fail to comply with the terms and conditions of this permission;
  - b. the information provided in support of your application for permission proves to have been inaccurate or incomplete; or
  - c. significant new information surfaces which this office did not consider in reaching the original decision that the activity would not impair the usefulness of the water resources development project and would not be injurious to the public interest.

# CONDUCT OF WORK UNDER THIS PERMISSION

- 10. You are responsible for implementing any requirements for mitigation, reasonable and prudent alternatives, or other conditions or requirements imposed as a result of environmental compliance.
- 11. Work/usage allowed under this permission must proceed in a manner that avoids interference with the inspection, operation, and maintenance of the federal project.

- 12. In the event of any deficiency in the design or construction of the requested activity, you are solely responsible for taking remedial action to correct the deficiency.
- 13. The right is reserved to the USACE to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to operate and/or to make any other use of the lands as may be necessary in connection with government purposes, and you will have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.
- 14. You must provide copies of pertinent design, construction, and/or usage submittals/documents. USACE may request that survey and photographic documentation of the alteration work and the impacted project area be provided before, during, and after construction and/or installation.
- 15. You may be required to perform an inspection of the federal project with the USACE, prior to your use of the structure, to document existing conditions.
- 16. USACE shall not be responsible for the technical sufficiency of the alteration design nor for the construction and/or installation work.









TIP PROJECT: HB-0039

Cape Fear Memorial Bridge

GOTECHNICAL UNIT

INFRASTRUCTURE

SORINGS HIGHLIGHTED IN RED = DRILL MUD & CUTTINGS WILL BE CONTAINED AND DISPOSED AT DESIGNATED LOCATION WITHIN PROJECT CORRIDOR

TEAL LINES = EXISTING PROPERTY LINES HATCH = EAGLE ISLAND NATURE PRESERV







Cape Fear Memorial Bridge

# TIP PROJECT: HB-0039



MAGENTA LINES = PROPOSED CLEARING AND MATTING PATHS

