PUBLIC NOTICE

CHARLESTON DISTRICT, CORPS OF ENGINEERS
69A Hagood Avenue
Charleston, South Carolina 29403-5107

REGULATORY DIVISION
Refer to: GENERAL PERMIT # 2007-14-001

JANUARY 26, 2007

Pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and Sections 401 and 404 of the Clean Water Act (33 U.S.C. 1344) and the *South Carolina Coastal Zone Management Act* (48-39-10 et.seq.) the Charleston District Engineer proposes to issue General Permit # 2007-14-001. This permit will be issued to the General Public and authorizes the certain beach nourishment activities for both private and commercial uses within

THE ATLANTIC OCEAN

within the regulatory jurisdiction of the Charleston District, within the State of South Carolina.

In order to give all interested parties an opportunity to express their views

NOTICE

is hereby given that written statements regarding the proposed issuance of the above referenced General Permit will be received by this office until

12 O'CLOCK NOON, MONDAY, FEBRUARY 26, 2007

This General Permit, if issued, will be effective for a period of five (5) years.

The proposed General Permit must be certified as consistent with applicable provisions of the Coastal Zone Management Program (15 CFR 930) as the activities will be occurring within six (6) of the coastal counties, (Horry, Georgetown, Charleston, Beaufort, Jasper and Colleton). The District Engineer will not issue this General Permit until such certification is received.

This notice initiates the Essential Fish Habitat (EFH) consultation requirements of the Magnuson-Stevens Fishery Conservation and Management Act. Our initial determination is that the proposed General Permit would not have a substantial individual or cumulative adverse impact on EFH or fisheries managed by the South Atlantic Fishery Management Council and the National Marine Fisheries Service (NMFS). Our final determination is subject to review by and coordination with the NMFS.

The District Engineer has consulted the most recently available information and has determined that the proposed General Permit is not likely to adversely affect any Federally endangered, threatened, or proposed species or result in the destruction or adverse modification of designated or proposed critical habitat. This public notice serves as a request for written concurrence from the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service on this determination or any additional information they may have on whether any listed or proposed endangered or threatened species or designated or proposed critical habitat may be affected by the proposed General Permit, pursuant to Section 7(c) of the Endangered Species Act of 1973 (as amended).

In accordance with the NHPA, the District Engineer has evaluated the proposed General Permit regarding its potential to effect cultural resources including registered properties or properties listed as being eligible for inclusion in the National Register. Provisions have been made in the form of general conditions to the proposed General Permit, which should prevent any adverse effect to cultural resources due to the issuance of this General Permit. To insure that issues regarding cultural resources that the District Engineer is not aware of are not overlooked, this public notice also serves as a request to the State Historic Preservation Office to provide any information it may have with regard to impacts this General Permit may have on historic and cultural resources.

Pursuant to Section 106 of the National Historic Preservation Act (NHPA), this public notice also constitutes a request to Indian Tribes to notify the District Engineer of any historic properties of religious and cultural significance to them that may be affected by the proposed undertaking.

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the project must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the project will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production and, in general, the needs and welfare of the people. A permit will be granted unless the District Engineer determines that it would be contrary to the public interest.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this project. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the activity.

If you have any questions concerning this matter, please contact Ms. Elizabeth Jackson at 843-329-8044.

General Permit No.: 2007-14-001
Name of Permittee: GENERAL PUBLIC
Effective Date:
Expiration Date:

DEPARTMENT OF THE ARMY
GENERAL PERMIT

A General Permit to perform work in or affecting navigable waters of the United States, upon the recommendation of the Chief of Engineers, pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (PL 92-500, 33 U.S.C. 1344) is hereby issued by the authority of the Secretary of the Army by the

District Engineer
U.S. Army Engineer District, Charleston
Corps of Engineers
69-A Hagood Avenue
Charleston, South Carolina 29403-5107

to authorize, where such authorizations are required, subject to the following special and general conditions, certain beach nourishment activities for both private and commercial uses within navigable waters of the United States, specifically those waters immediately adjacent to the Atlantic Ocean, within the State of South Carolina.

I. SPECIAL CONDITIONS:

A. Ocean Front Beach Nourishment

NOTE: There are 3 categories of ocean front beach nourishment restrictions listed as follows: 1) those activities for **non-commercial, private use**, 2) those for emergency **commercial, public use** and 3) those for **all** ocean front beach nourishment activities regardless of their use. (i.e. must comply with conditions listed in 1. **or** 2. **and** 3.) Authorized activities for commercial, public use are for emergency situations only and are not authorized for re-occurring work. Continued or re-occurring work should be applied for under an individual permit.

1. Ocean front beach nourishment activities **for non-commercial, private use:**

(a) Sand scraping is limited to the area within extended property lines located directly in front of the private residence being protected.

(b) The placement of material, meeting the terms and conditions outlined herein, is authorized provided the purposes of such placement are to provide temporary erosion relief to areas which are in close proximity to inhabited structures and the work occurs between the months of November and April.

2. Ocean front beach nourishment activities for emergency **commercial, private use:**

(a) An emergency situation exists where there is an imminent threat to public health and safety or the environment requiring immediate remedial action to provide temporary erosion relief.

(b) Sand scraping is limited to the property owned and controlled by the same property being protected to provide erosion control to those structures or properties which are in imminent threat.

(c) Prior authorization must be obtained from South Carolina Department of Health and Environmental Control Office of Ocean and Coastal Resource Management (SCDHEC-OCRM)

(d) A Pre-Construction Notice (PCN) must be submitted prior to commencement of each and every beach nourishment project/event. Work shall not commence until a written verification of authorization is received from this office. The notification must be in writing and include the following information:

- Completed "Joint Federal And State Application Form For Activities Affecting Waters Of The United States Or Critical Areas Of The State Of South Carolina"
- Plans for the proposed work (8.5 X 11" black and white drawings) showing the areas where sand scraping will occur along with the area where the sand will be deposited. The mean high water (MHW) and mean low water (MLW) elevations should be located on the plans. Cross sectional diagrams should indicate the depth to which sand will be scraped and the depth to which sand will be deposited.
- Statement that the work will be conducted in compliance with the terms and conditions of this General Permit

3. **ALL** Ocean front beach nourishment activities:

(a) The material excavated from oceanfront beach shall not be placed behind bulkheads, seawalls, or other manmade structures and no means other than vegetation shall be used to stabilize material placed for erosion relief.

(b) No beach nourishment activities will occur in areas designated or proposed as critical habitat (50 CRF 17) for piping plover.

(c) No beach nourishment activities will occur in areas where the Amaranthus pumilus (Seabeach Amaranth) is likely to occur or establish, such as overwash flats at accreting ends of barrier islands and foredune areas.

(d) No continued, re-occurring work is authorized by this general permit. Those persons or entities that plan to do ocean front beach nourishment activities on a regular basis should apply for an individual permit. Any beach nourishment activities taking longer than 2 weeks to complete and re-occurring more than twice a year under normal circumstances should be processed under an individual permit. These re-occurring activities will be evaluated under the individual permit review process as specified in 33 CFR 325. Beach nourishment activities proposed to exceed the above limitations and which are in response to natural disasters or significant storm events shall be approved under the discretion of the District Engineer. It is not the intent of this general permit to authorize reasonably foreseeable, reoccurring beach nourishment work for the purposes of maintaining high ground that is undergoing a natural erosion and accretion process.

(e) Excavation by other than hydraulic means to obtain sand from non-vegetated ocean front beach areas is authorized provided that the excavation is confined to areas between the mean high water and mean low water contours, the average depth of excavation does not exceed two (2) feet in depth and the placement of fill material is compatible with the soils in the nourished area.

II. GENERAL CONDITIONS:

A. This General Permit authorizes only those activities and structures specifically addressed below. The permittee must obtain Department of the Army authorization, such as the issuance of an individual permit, for all other activities that are regulated pursuant to Section 10 of the Rivers and Harbors Act within waters of the United States.

B. All activities identified and authorized herein shall be consistent with the terms and conditions of this General Permit; any variance not specifically identified and authorized herein shall constitute a violation of the terms and conditions of this permit and may result in the modification, suspension, or revocation of the authorization, as set forth more specifically in General Condition F. below and in the institution of such legal proceedings as the United States Government may consider appropriate.

C. The permittee must make every reasonable effort to conduct the work authorized herein in a manner so as to minimize any adverse impact to fish, wildlife, and other environmental resources.

D. The permittee must make every reasonable effort to conduct the work authorized herein in a manner so as to avoid and minimize any degradation of water quality.

E. The permittee shall allow the District Engineer or his authorized representative(s) to make periodic inspections at any time deemed necessary in order to assure that the activity being performed under authority of this permit is in accordance with the terms and conditions prescribed herein.

F. Authorization of a specific work or structure authorized herein may be summarily suspended in whole or in part upon a finding by the District Engineer that immediate suspension would be in the general public interest or there has been a violation of any terms or conditions of this permit. Such suspension shall be effective upon receipt by the permittee of a written notice thereof which shall indicate (1) the extent of the suspension, (2) the reasons for this action, and (3) any corrective or preventative measures to be taken by a permittee which are deemed necessary by the District Engineer to abate imminent hazards to the general public interest. A permittee shall take immediate action to comply with the provisions of this notice. Within ten (10) days following the receipt of this notice of suspension, the permittee may request a meeting with the District Engineer or a public hearing to present information relevant to a decision whether their permit should be reinstated, modified, or revoked. If a public hearing is requested it shall be conducted pursuant to procedures prescribed by the Chief of Engineers. After completion of the public hearing or within a reasonable time after issuance of the suspension notice to the permittee if no hearing is requested, the authorization of the specific work or structure will be reinstated, modified, or revoked. Any modification, suspension, or revocation of authorization under this General Permit shall not be the basis for any claim for damages against the United States.

G. Upon receipt of a notice from the District Engineer for failure to comply with the terms, conditions, or standards of this General Permit, the owner or person responsible for the work must within sixty (60) days without expense to the United States and in such manner as directed by the District Engineer or his authorized representative(s), effect compliance with the terms, conditions, and standards or restore the site to pre-construction contours.

H. This General Permit does not convey any property rights, either in real estate or material, or any

exclusive privileges; it does not authorize any injury to property or invasion of rights or any infringement of Federal, State, or local laws, nor does it obviate the requirement to obtain other Federal, State, or local assent or to comply with any applicable standards required by ordinance for the activities authorized herein. Other Federal, State, or local agencies are not limited by this document and may impose more stringent requirements than those stated herein as they see fit.

I. Any activity that may affect any federally listed threatened or endangered species, a species proposed for listing, or designated critical habitat is **NOT** authorized by this General Permit. These activities will be evaluated under the individual permit review process as specified in 33 CFR 325.

J. Any activity that may affect any historic properties listed, or which may be eligible for listing on the National Register of Historic Places is **NOT** authorized by this General Permit. These activities will be evaluated under the individual permit review process as specified in 33 CFR 325.

K. If the permittee, prior to or during the performance of the work authorized herein, encounters previously unidentified archeological remains or cultural resources within the area subject to Department of the Army authorization, the applicant agrees to cease work and contact the District Engineer, so that further coordination with the South Carolina Institute of Archaeology and Anthropology and the South Carolina Department of Archives and History may be conducted.

L. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to restore the site completely to pre-construction conditions, without expense to the United States. No claim shall be made against the United States on account of any such work.

M. The Charleston District Engineer, at his discretion, may determine that this General Permit will not be applicable to a specific construction proposal. In such case, the procedure for processing an individual permit in accordance with 33 CFR 325 will be available.

III. PROHIBITED ACTIVITIES:

All work that exceeds the terms and conditions specified herein is prohibited unless an Individual Department of the Army Permit or Nationwide Permit authorization has been obtained from the Corps of Engineers. All work for purposes other than those specified herein is expressly not authorized by this document.

IV. REQUIRED AUTHORIZATIONS:

A. Prior to performing any of the work authorized herein the permittee shall obtain the necessary state permits from the South Carolina Department of Health and Environmental Control and any other required Federal, State or local authorizations.

B. The permittee shall obtain a Critical Area Permit and a Coastal Zone Consistency Certification from SCDHEC, Office of Ocean and Coastal Resource Management.

V. PENALTIES FOR VIOLATIONS:

Authorization obtained under this General Permit limits the number of times this authorization can be used per site and places limits on the work authorized herein. Any deviation from the specifications, or other terms or conditions of the General Permit shall constitute a violation of Section 10 of the Rivers

and Harbors Act of 1899 and may result in the District Engineer seeking judicial relief to have the permittee remove the structure or work and/or restore the project area to its former condition, as well as the imposition of penalties as provided by law.

VI. REVOCATION OF THE GENERAL PERMIT:

This permit may be revoked by issuance of a public notice at any time the District Engineer determines that the cumulative effects of the activities authorized herein have an adverse effect on the public interest. Following such revocation, any future activities in areas covered by this General Permit will be processed as an Individual Department of the Army Permit or Nationwide Permit authorization.

VII. DURATION OF THE GENERAL PERMIT:

This General Permit will cover activities started within five (5) years and completed within six (6) years after the date of issuance unless this permit is revoked in the interim. Revoking the General Permit will not affect work performed in accordance with the conditions stated herein. At the end of the first year and every succeeding year, the Corps of Engineers and the Federal and State regulatory and resource agencies will jointly review activities authorized by this General Permit to determine if significant cumulative impacts have resulted. If the District Engineer determines revocation of this permit, in whole or in part, may be in order due to cumulative impacts, a public notice of the intention will be issued and after a review of all additional data submitted, action will be taken to amend, modify or revoke this permit as appropriate. Revocation of the General Permit will not affect the work that had been authorized when the General Permit was in effect if such work is in accordance with the provisions contained herein.

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

This permit shall become effective on the date of the District Engineer's signature.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

_____ _____

Edward R. Fleming
LTC, Corps of Engineers
Charleston District Commander

Date