STATE OF NORTH CAROLINA
COUNTY OF HARNETT

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT, made this the 13th day of August, 2001, by and between the NORTH CAROLINA WETLANDS RESTORATION PROGRAM, DIVISION OF WATER QUALITY, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE DEPARTMENT OF ARMY FORT BRAGG, NORTH CAROLINA.

WITNESSETH:

NOW THEREFORE, in consideration of the mutual promises, obligations, and benefits hereunder exchanged and obtained, the North Carolina Wetlands Restoration Program (NCWRP) and Fort Bragg mutually covenant and agree as follows:

I. PURPOSES:

A. This Memorandum of Agreement (MOA) outlines the respective roles of the NCWRP and Fort Bragg for the use of property for the purpose of stream and wetland restoration in accordance with NCGS 143-214.9. The parties to this MOA are entering into this agreement to facilitate compliance with the requirements of the Clean Water Act (CWA), Sections 404(b) and 401 water quality certification (WQC), United States Army Corps of Engineers (USACE) / Environmental Protection Agency (EPA) wetlands mitigation policy, and Executive Order 11990 Protection of Wetlands.

B. This MOA has the specific purpose of providing Fort Bragg and other federal agencies that have Agreements or Partnerships with Fort Bragg with high quality compensatory mitigation projects that may be used to mitigate for unavoidable impacts to the waters of the United States, upon approval of the USACE, Wilmington District, and the North Carolina Department of Environment and Natural Resources (DENR).

C. The MOA will clearly define responsibilities between the State, USACE, and Fort Bragg. In addition, it will help eliminate administrative duplication involving compensatory mitigation and wetland permitting requirements.

II. APPLICABLE AUTHORITY:

The Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, more commonly known as the CWA, establishes specific requirements for parties proposing to engage in dredge and fill activities in USACE jurisdictional wetlands. Under Section 301 (Prohibitions) the discharge of filled materials into waters of the United States is subject to permitting under Title IV (permitting and licenses), which is specifically addressed in Section 404 (discharge of dredged or fill material) prior to engaging in any such activities. In addition to a CWA 404(b) permit from USACE, the State of North Carolina requires a state certification permit pursuant to Section 401 of the CWA. As a prerequisite to permitting

dredge and fill activities exceeding 0.3 acres, USACE / EPA policy requires mitigation for the taking of affected wetlands.

All compensatory mitigation required by permits or authorizations issued by USACE under 33 U.S.C. 1341 shall be consistent with the Basinwide plans for wetlands restoration and rules developed by the North Carolina Environmental Management Commission. Compensatory mitigation may be satisfied through the NCWRP, a non-regulatory statewide program within DENR established by the North Carolina General Assembly in 1996 for the purpose of restoring wetland, streams, and streamside riparian areas throughout the state.

III. RESPONSIBILITIES:

Fort Bragg and the NCWRP agree to work together to develop a cooperative process for identifying and implementing compensatory mitigation projects in accordance with Watershed Restoration Plan developed for the Cape Fear River Basin. Fort Bragg and NCWRP agree to work together to establish mitigation sites on Fort Bragg for the purpose of compensating for unavoidable wetland losses in advance of permitted impacts. Fort Bragg and NCWRP agree that implementation of this cooperative process and the restoration of riparian areas and wetlands for the purpose of satisfying compensatory mitigation requirements will require agreement upon the following conditions:

A. Compensatory Mitigation Obligations

Fort Bragg and the NCWRP agree that the intent of this MOA is to provide compensatory mitigation to Fort Bragg for the purpose of satisfying compensatory mitigation permits, associated with 401 and 404 permits issued by DENR and USACE, through payment to DENR's Wetland Trust Fund in accordance with Rule 15A NCAC 2R.0402. The fee will be based on the quantity and types of compensatory mitigation specified in the approved certifications issued by DENR under 33 USC 1341 and permits or authorizations issued by the USACE under 33 USC 1344.

Fort Bragg and the NCWRP agree to the following:

1. The NCWRP will provide compensatory mitigation for the following projects:

   Separate Battalion Barracks Complex, all phases
   Combat Aviation Brigade Complex, all phases
   Ammo Holding Area

2. The NCWRP will provide up to 10 acres of wetland restoration and 1000 linear feet of stream restoration for the projects listed above in Paragraph 1. The amount paid for wetland and stream restoration credits will be determined in accordance with the NCWRP's schedule of fees in effect at the time of payment.

3. The disposition of the remaining wetland and stream restoration credits resulting from the Jumping Run Creek project will be addressed in a

subsequent agreement between Fort Bragg and the NCWRP. Disposition approaches to be considered will include but not be limited to purchase of all remaining credits by Fort Bragg, use of the remaining credits by the NCWRP in accordance with the MOU between NCWRP and the USACE, Wilmington District.

4. The use of these credits provided by the NCWRP will meet Fort Bragg compensatory mitigation requirements specified in Section 404 permits and 401 Water Quality Certifications must be approved by the USACE, Wilmington District, and DENR's Division of Water Quality's Wetland/401 Unit.

5. Any expenditure of funds by Fort Bragg under this MOA is subject to availability of funds for the purposes of compliance of the Anti-Deficiency Act. If sufficient funds are not made available to fully execute the agreement, Fort Bragg will either terminate or amend the MOA in accordance with the termination and modification procedures set forth in paragraph VI of this agreement.

B. **Establishment of Mitigation Site**

1. Fort Bragg and the NCWRP agree to establish a mitigation site at the Jumping Run Creek site on Fort Bragg's Overhills property. See site map (Attachment A.). The NCWRP has agreed to design, construct, and monitor the restoration at the Jumping Run Creek site.

2. The Fort Bragg mitigation site, once established, will be identified in the installation's Integrated Natural Resource Management Plan as a protected site. Fort Bragg agrees that, during the time it holds the protected site, it shall not engage in military activities or construction projects that will alter vegetation, soils, and hydrology of the site. Fort Bragg agrees that it will make good faith efforts to obtain, through its representatives at the Army Corps of Engineers, Savannah District Real Property Office, a letter from the General Services Administration (GSA) stating that in the event the property ever becomes excess to the needs of the government, and is subsequently disposed of, that GSA will ensure the property is protected with the proper restrictions on use through covenants in the relevant conveyance documents

C. **Access to the Mitigation Site**

1. Fort Bragg agrees to allow NCWRP and their contractors' access to Fort Bragg for the purposes of this MOA including access to construct the mitigation site and future monitoring of restored wetlands. Such access and all party activities are subject to applicable Federal laws, regulations, and comprehensive management plans of Fort Bragg for the affected area. All activities will be consistent with all safety and security considerations, will at all times be compatible with military operations and will be subject to approval by Fort Bragg's Installation Commander.

considerations, will at all times be compatible with military operations and will be subject to approval by Fort Bragg's Installation Commander.

2. Fort Bragg will identify a central point of contact for coordination of all activities pertaining to the wetland mitigation. Fort Bragg will provide the NCWRP with any available site information and project boundary map.

3. The NCWRP will identify a central point of contact for coordination of all activities pertaining to the wetland and stream restoration.

IV. OPEN COMMUNICATION AND COOPERATION

Both the NCWRP and Fort Bragg acknowledge that it is their best interest to facilitate the process set forth in this MOA by open communication and cooperation. Both parties expect to exercise their rights and obligations in good faith as contained in this MOA.

V. GENERAL PRINCIPLES:

Contents of this MOA shall not impede the parties from using other mechanisms for cooperating to accomplish the purpose set out above. Nothing in the MOA shall obligate either party to any present or future expenditure of funds except as specifically described herein. The parties of this MOA or their designated representatives shall meet annually to review activities associated with this MOA. The signatory parties agree that performance under this MOA is dependent upon lawful appropriation, availability, and allocation of resources by proper authorities.

VI. MODIFICATION AND TERMINATION:

This MOA shall remain in full force and effect for (10) ten years or until terminated by either of the signatories to the MOA, provided (45) days written notice is given to each party. Modification of this MOA requires written agreement by both the Division of Water Quality and Fort Bragg. The MOA can be renewed if the parties are in agreement concerning the need for renewal. Signatures must be obtained from both parties to fully execute the renewal.

VII. IMPLEMENTATION:

This MOA shall become effective when signed by both the Director of Division of Water Quality, North Carolina Department of Environment and Natural Resources and the Garrison Commander of Fort Bragg.

Date: 13 AUG 2001

ADDISON D. DAVIS, IV
Colonel, U.S. Army
Garrison Commander

Date: 31 July 01

KERR T. STEVENS
Director, Division of Water Quality
NC Department of Environment and Natural Resources

STATE OF NORTH CAROLINA
COUNTY OF HARNETT

ADDENDUM TO MEMORANDUM OF AGREEMENT

MADE THIS THE _____ DAY OF _____, 2003, BETWEEN THE NORTH CAROLINA WETLANDS RESTORATION PROGRAM, DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES AND THE DEPARTMENT OF ARMY FORT BRAGG, NORTH CAROLINA DATED AUGUST 13, 2001. THIS ADDENDUM IS IN ACCORDANCE WITH SECTION III, PARAGRAPH A, CONDITION 3.

1. All references to the Division of Water Quality are deleted. The North Carolina Wetlands Restoration Program (NCWRP) is now within the Secretary's Office of the North Carolina Department of Environment and Natural Resources. The NCWRP's relocation to the Secretary's Office is the result of restructuring efforts within the Division of Water Quality and the Department of Environment and Natural Resources. The NCWRP will remain within the Department.

2. Section III. Paragraph A.

a. Responsibility 1 is amended by adding the following projects forecasted wetland impacts:

PN 41631, 16th Military Police Barracks
- ❑ Approximately 0.402 acres of wetland impacts and 0 linear feet of stream impacts will likely require approximately 1 acre of wetland mitigation and 0 linear feet of stream mitigation based on a 2:1 mitigation ratio.

PN 36195, 82d DIVARTY Barracks Complex, all phases
- ❑ Approximately 2 acres of wetland impacts and 400 linear feet of stream impacts will likely require approximately 4 acres of wetland creation and 800 linear feet of stream restoration based on a 2:1 mitigation ratio.

Residential Community Initiative Project
- ❑ Approximately 2.5 acres of wetland impacts and 450 linear feet of stream impacts will likely require approximately 5 acres of wetland creation and 900 linear feet of stream restoration based on a 2:1 mitigation ratio.

PN 20815, Separates Battalion Motor Pool

- ❑ Approximately one acre of wetland impacts and no stream impacts will likely require approximately two acres of wetland creation based on a 2:1 mitigation ratio.

b. Responsibility 2 is amended by increasing the amount of wetland and stream restoration provided by NCWRP to Fort Bragg to include an additional:

- ❑ 17 acres of restored wetlands
- ❑ 1500 linear feet of stream restoration

c. Responsibility 3 will be met through this addendum and future addendums that address the original MOA and subsequent MOA's if they arise.

d. Responsibility 4 remains unchanged.

e. Responsibility 5 remains unchanged.

f. Add a Responsibility 6 to read as follows:
Any additional credits that could result from the Jumping Run Creek Mitigation Site are Fort Bragg's to debit. Credits created through wetland restoration or linear feet of stream restoration that are not used as compensatory mitigation for the projects referenced in Responsibility 1 of the original MOA are retained by Fort Bragg and may be used as compensatory mitigation for future projects in accordance with this MOA and subsequent Addenda.

3. Under this and each subsequent addendum, if compensatory mitigation or wetland/stream impacts outlined in project line item, under 2a, exceed or are less than predicted amounts, then, under this Addendum, Fort Bragg owns the rights to exchange or trade mitigation between line item projects or use excess credits from the Jumping Run Mitigation Site as deemed necessary by Fort Bragg, as long as appropriate payment has been made to the NCWRP pursuant to Paragraph III A of the August 13, 2001 MOA.

4. This Addendum to the August 13, 2001 MOA shall remain in full force and effect for 10 years or until terminated by either of the signatories to the MOA, provided 45 days written notice is given to each party prior to the proposed withdrawal. Modification of this MOA Addendum requires written agreement by both the North Carolina Wetlands Restoration Program and Fort

Bragg. The Addendum can be renewed if the parties are in agreement concerning the need for renewal. Signatures must be obtained from both parties to fully execute the renewal.

5. This Addendum to the August 13, 2001 MOA shall become effective when signed by both the Secretary of North Carolina's Department of Environment and Natural Resources and the Garrison Commander of Fort Bragg.

Date: 9 APRIL 2003

ADDISON D. DAVIS, IV
Colonel, U.S. Army
Garrison Commander

Date: 21 May 2003

WILLIAM G. ROSS, JR.
Secretary
North Carolina Department of
Environment and Natural Resources