



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
WASHINGTON, D.C. 20380

IN REPLY REFER TO
CL-1j
7 January 19

MEMORANDUM FOR THE ASSISTANT COMMANDANT AND CHIEF OF STAFF

Subj: Comments on Annexation of MCAS, Cherry Point by City of Havelock

I. Annexation in General

1. Meaning of term "annexation".

Annexation is the extension of the geographical or territorial boundaries of a municipality in a given State to include a new area in that State. It has been described as a rearrangement of the political structure of the State. It transfers the exercise of the State's governmental functions within the annexed area from one political subdivision, usually a county, to another political subdivision, usually a city.

2. Method of accomplishing annexation.

Annexation is provided for and must be accomplished in accordance with the law of the State involved. The laws of the States vary as to the requirements that must be met and the procedures to be followed. Some require consent by the majority of landowners in the area to be annexed; some do not. Some require consent by the Federal Government for annexation of a military reservation; many do not.

3. Effect of annexation.

Annexation does not constitute a taking of property. It does not interfere with the legislative jurisdiction of the United States within the area or the Government's use or disposition of its property.

The extent of governmental functions that the annexing political unit may exercise depends upon the State law; and where a military reservation is included, it also depends upon the powers delegated to the State under the Constitution and by Congress. Generally, annexation results in an increase in area and population and normally of revenues available to the city. The

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city may tax the citizens of the annexed area as it taxes the citizens of the original area. As a practical matter, this means that persons residing or working in the annexed area may be subject to additional taxes, although military personnel who are not legal residents of the State are protected against taxation by the Soldiers' and Sailors' Civil Relief Act. Civilians, contractors and resident military personnel may be taxed. The cost of utilities and related services may be increased due to taxes on the suppliers. Licenses may be required. Certain regulatory action may be taken although not such as to interfere with the Federal function.

The ability of the city to tax and regulate depends on the State law and the degree of legislative jurisdiction exercised by the United States over the area to be annexed. The latter factor affects also the obligation of the city to furnish normal municipal services to the annexed area. In most States, for example, the city is generally required to furnish services such as street maintenance, garbage disposal and police and fire protection to the new area as it does to the existing area. This obligation probably does not extend to military reservations under exclusive jurisdiction and may not extend to any military reservation.

4. Department of Navy policy with respect to annexation.

As specified in SecNav Instruction 11011.29A, the DON policy is not to oppose annexation unless it is determined to be contrary to the interests of the Government. A decision to oppose generally requires a determination that annexation would have a significant adverse effect. Such an effect could result if the mission of the activity was threatened or the cost of essential services markedly increased. It could occur if two or more competing jurisdictions seek to annex at the same time; or where annexation would result in the reservation being split up so as to be a part of more than one municipality. The possibility of personnel becoming subject to the payment of taxes in common with other residents of a city is not considered an adverse effect.

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The basis of the DON policy seems to be that the city may well succeed with annexation even in the face of opposition, assuming compliance with State law. The Supreme Court in Howard v. Commissioners, 344 U.S. 624 (1953) stated unequivocally that municipal corporations may annex Federal military installations despite lack of consent even if the Federal Government has exclusive jurisdiction over the installation;

II. City of Havelock Annexation of MCAS, Cherry Point.

1. North Carolina law on annexation does not specifically mention the Federal Government or military reservations. It thus appears that the Federal Government is treated as is any other landowner. Since the law does not require the approval of the landowner or even a vote by the landowners involved, military reservations may be annexed without the consent of the Federal Government provided the statutory procedure is followed. A property owner may obtain a review by the North Carolina courts of a purported annexation if the property owner has suffered material injury due to the municipality not having met statutory requirements. The court may remand for additional proceedings or require amendment of the annexation plan or the boundaries.
2. In the Havelock-Cherry Point case, it appears that the city has complied with all statutory requirements with the possible exception that it has failed to meet a requirement that it establish a plan for furnishing to the annexed area municipal services such as fire protection. Assuming that the furnishing of services is a requirement, the city's failure is a basis for an appeal to the North Carolina Courts or the Federal District Court.

It should be recognized that we would face several difficulties in attempting to assert a failure to plan for furnishing services to the Base. First, it is not clear that this requirement applies to military reservations. The general law relating to furnishing services was developed in situations involving private land where the landowners were subject to taxation and the enforcement of ordinances relating to the services. The Federal Government is not normally subject to municipal taxation or regulation. It is true that the United States Comptroller General has ruled that municipalities have a legal obligation

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to furnish fire protection to Federal installations where they are obligated by State law to furnish it generally to their citizens. However, the Comptroller General appears to recognize that this obligation extends only to areas not under exclusive jurisdiction, and in any event, his decisions have not been recognized by municipalities. It is doubtful that the Comptroller General's view of the law would prevail in the absence of an ability on the part of the city to tax or recover monies in lieu of taxes.

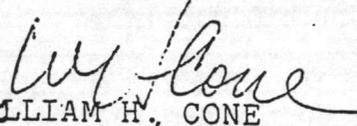
A second difficulty is that the North Carolina law is not clear as to the obligation to furnish services. In re Annexation Ordinance, 255 N.C. 633, 122 S.E.2d690 (1961) indicates that the obligation depends upon all the circumstances of the case, including whether the services are needed. The Air Force in connection with North Carolina annexations has interpreted this case to mean that the services are not required to be furnished unless the annexed area has a definite need. The City of Havelock apparently prepared its plan with this interpretation of the law in mind since it stated in its plan that these services would not be needed because the Government was already furnishing them to itself. It is questionable that we have a need for services from the city at this time. We are presently obtaining them directly or supplying them ourselves.

The third factor to be considered is that the ability to appeal to a court is no more than a mechanism for objecting to the annexation. Under North Carolina law, we would still have to show material injury resulting from the failure to provide for the services in question; and under Department of Navy policy the showing of a significant adverse effect remains a prerequisite to protest. We have not been able to develop a case of material injury or significant adverse effect. There seems to be doubt as to whether we would insist on the services, and while we foresee possible adverse effects on county finances and thus on the school system and airport development, the adverse effect is speculative.

3. In my view, we are not in a position to effectively protest by appeal to the Courts or otherwise. A more reasonable action would be to advise the city by letter that we are not protesting the annexation but that we are serving notice of intention to hold the city

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of Havelock

liable for furnishing services as required by law
if and when the need for such services develop. This
would be consistent with the approach heretofore taken
by the Commanding General, MCAS and should be sufficient
to avoid waiver of any rights available under the law.


WILLIAM H. CONE

Copy to:
DC/S for I&L

Blind copy to:
→ Major McBride

BRIEF FOR CMC

I. BACKGROUND

A. On 22 October 1979, the Board of Commissioners, City of Havelock, passed a resolution of intent to annex Marine Corps Air Station, Cherry Point, North Carolina.

B. The annexation is authorized under the General Statutes of the State of North Carolina.

C. It would appear that Havelock has proceeded in accordance with the statute law.

II. IMMEDIATE AND POTENTIAL FUTURE EFFECTS OF ANNEXATION ON THE AIR STATION

A. Marine Corps Air Station, Cherry Point, North Carolina, would be located entirely within the city limits of Havelock, North Carolina.

B. City Services. Under North Carolina General Statutes, the annexing municipality is required to provide the following services: police protection, fire protection, a sewer system, a water system, and garbage collection. The City of Havelock currently has no plans for implementation of these services with the exception of minor police protection as noted below. The City in its annexation proposal clearly states that it does not plan to make these services available as the Air Station is self-sufficient in these areas.

1. Police. City police would exercise limited police functions in Slocum Village and Fort Macon housing areas as these areas are concurrent jurisdiction unlike the remainder of the installation which is exclusive federal jurisdiction.

2. Other City Services. Should the Air Station be annexed, we would not initially use any of the city services such as water, sewer, garbage collection, etc., as the installation provides these services independent of the city. The Air Station and the City currently have a mutual firefighting agreement. The problem in this area lies in the possible reduction of future funding based upon the requirement of the supplying of these services by the City. The City is not now capable of assuming these functions at the same level as presently offered, thus a definite decline in living standards and morale could result.

C. Taxation. Personnel residing aboard the Air Station as well as contractors doing business aboard the installation could be required to obtain certain city licenses as well as pay certain city taxes. It is

anticipated that these areas would not have a significant impact upon the installation at the present time. The city has already passed a resolution promising that taxation would be kept at a minimum. The resolution is not binding upon this city administration nor any future administration, thus personnel could be subject to the entire gamut of taxes presently levied by the City of Havelock at some future time.

III. EFFECTS OF ANNEXATION ON SURROUNDING MUNICIPALITIES AND POLITICAL ENTITIES

A. Municipalities. All municipalities in the state stand to lose a small portion of their funding as Havelock's increased population will entitle the city to greater revenue in programs which allocate funds based upon population. The other municipalities in Craven County stand to lose a larger percentage of this funding because of Havelock's increased population as some revenue programs distribute funds to counties which are then divided on a basis of the population of municipalities within that county.

B. Other Political Entities. Craven County estimates a revenue loss of \$250,000.00 as a result of annexation. This is a conservative figure. The more realistic estimate is placed at \$350,000.00. This could significantly impact on area schools, as all schools in the immediate area are funded by Craven County. The county is also in the process of expanding the airport (Simmons Knott) in order to maintain a national carrier; this project could be adversely affected by annexation. The effects of not having a major airline serving the area and a degrading of the local school system can be expected to have deleterious effects upon morale, as well as added transportation costs to the Command as the next major airport is fifty (50) miles distant.

IV. COMMAND ACTION

A. In accordance with SECNAVINST 11011.29A, this Command forwarded a memorandum on the proposed annexation to Commandant, Fifth Naval District; Commandant of the Marine Corps; Commander, Naval Facilities Engineering Command; Commander, Naval Facilities Engineering Command, Atlantic; Assistant Secretary of the Navy (I&L); and the Commanding General, Second Marine Aircraft Wing, on 9 November 1979.

B. On 21 November 1979, General Smith luncheoned with the Mayor and City Commissioners and received an unofficial pledge to continue the public hearing on annexation scheduled for 26 November until a later date.

C. On 23 November, this Command, by message, requested guidance by 7 December 1979, if the hearing was in fact continued.

D. At the public hearing on 26 November 1979, the City Commissioners continued the public hearing until 1100 on 5 December 1979.

E. On 27 November 1979, by message to the Commandant, Fifth Naval District, Norfolk, Virginia, this Command requested guidance prior to the 5 December meeting.

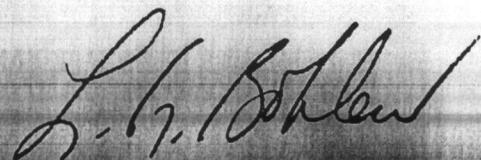
F. The reply to the messages (041228Z) states in part, "Pursuant to delegation of authority contained in paragraph 6D, reference (a) (SECNAVINST 11011.29A) you are directed to enter an appearance in public hearing on subject annexation scheduled for 1100, 5 December 1979, and request (a) 90 day extension of time. You are also directed to enter a protest to subject proposed annexation to assure that the interests of the government in this matter are not forfeited."

G. At the meeting of the City Commissioners held on 5 December 1979, General Smith personally requested a 90 day extension of time and entered a protest to assure that the interests of the government in this matter are not forfeited. The City Commissioners discussed the Commanding General's request at length. The Commissioners discussed the three basic options available to them which are:

1. To proceed as planned;
2. To wait until 24 January 1980 to vote, this is the last day the City Commissioners could vote on the annexation. Any delay after 24 January 1980 would put them in violation of North Carolina's annexation statutes;
3. To grant the 90 day extension, this option would entail starting the entire annexation procedure over again with a view to complete the annexation by 1 April 1980.

At the conclusion of the discussion on the requested delay, the City Commissioners voted to close the public hearing. It is anticipated that the request for a delay will be discussed and a decision reached on how the City plans to proceed at the City Commissioners' regular meeting on 10 December 1979. The Commissioners again stated their willingness to review any correspondence pertaining to annexation up to and including the day the vote is actually taken.

H. Under the present statutory scheme, it is unnecessary for the Commissioners to discuss the annexation prior to voting, if they so desired, they could vote to annex the Air Station as early as 12 December 1979.



POINT PAPER

ANNEXATION:

1. On 28 December 1979 the City of Havelock annexed the majority of the property occupied by the Marine Corps Air Station, Cherry Point, North Carolina. Those areas not annexed are primarily wooded areas near the weapons storage area.
2. The purpose of annexation was to obtain added tax revenue for the City of Havelock. By annexing the Air Station the municipality which had a population of approximately 4,500 gained 14,800 additional persons. A number of State and Federal tax programs including sales tax, gasoline tax, utilities tax and revenue sharing are distributed to municipalities based upon population. The City hoped to gain \$450,000 per year by annexing the Air Station. None of this money was to come from new taxes levied on persons living on the Air Station, but rather a redistribution of existing tax money within the County and State.
3. The major revenue gain was to be in the area of distribution of the North Carolina Sales Tax. Havelock expected to gain at least \$250,000 in this area. North Carolina distributes a portion of the sales tax monies collected each year to the counties who, in turn, share the money with the municipalities located within their county. Two methods of distribution can be utilized in distributing this money. A per capita method where the money is shared between the County and the City based on a straight population basis or an ad valorem basis wherein the value of property in the county or municipalities is used to determine distribution of funds. Prior to annexation Craven County divided the money purely on the basis of population, the Base population being counted as part of the County. The County, therefore, became the big loser by Havelock's annexation.
4. The Air Station and Craven County both opposed the annexation of the Air Station.
5. The Air Station, since annexation, has encountered no difficulties with the City of Havelock. There have been some positive benefits to annexation such as a willingness on the part of the Havelock Police Department to respond to complaints against civilians or dependents in the off-base military housing areas of Fort Macon and Slocum Village.
6. The animosity created between the County and the City of Havelock continues. The County shortly after annexation closed the sanitary landfill adjacent to the City of Havelock. While assurances prior to annexation had been given for the establishment of a transfer station at the site of the old landfill, after annexation and the closing of the landfill, the transfer

station failed to materialize. For over a year the City of Havelock has had to transport the City trash approximately sixty miles to a landfill located near Vanceboro, North Carolina. The City has no Building Inspectors and has encountered some difficulty in obtaining County Building and Health Inspectors to come to Havelock to examine unsafe living conditions. Most often these conditions are in low cost trailer parks in which Marines reside.

7. The major concern of the animosity between the City and the County lies with the school system. The school system is a County-wide school system that will be consolidated with the New Bern City School System on 1 July 1981. The school system has its own separate Board but is heavily dependent on the County for operating funds. The New Bern City School System recently failed State accreditation and it can be anticipated that the County School Board will be spending far more money in upgrading the New Bern City Schools than they will be in the rest of the County. Hopefully the animosity that has arisen between Havelock and Craven County will not manifest itself in inadequate support for the Havelock Schools. However, this area needs to be monitored closely.

8. Havelock has not reaped the anticipated benefits of annexation. The County switched the distribution method of sales tax to an ad valorem basis shortly after annexation. The City of Havelock thereafter has been receiving even less in sales tax distributions than they had prior to annexation. The City has received some gasoline tax money but this money can only be used for street repair. It would appear that President Reagan is about to eliminate the other major tax benefit of annexation, that is, revenue sharing.

SCHOOL BOARD

Craven County Superintendent (Present through 30 June 1981):

Mr. Hiram J. Mayo (resignation effective 30 June 1981)
Mr. Mayo will serve as an Educational Advisor
to the New Bern/Craven County Board of Education
beginning 1 July 1981 for a period of two years.

New Bern Schools Superintendent (Present through 30 June 1981):

Mr. Will Pittman
Mr. Pittman will continue to serve the New Bern/Craven
County Board of Education beginning 1 July 1981 for a
period of two years in a capacity yet to be determined.

New Bern/Craven County Board of Education (1 July 1981)

CHAIRMAN: Mr. Roger Forrest

MEMBERS: Mr. Roger R. Bell (Havelock)
S.L. Tom Adams
James W. Smith
Mrs. Jane C. Atkinson
Rev Roy Edward McCabe (Havelock)
Robert Gaskins
Rufus McAden
Norman Sears
John B. Satterfield
Mrs. Alice Underhill
James Chance

SUPERINTENDENT: Dr. Ben Quinn

CITY OF HAVELOCK OFFICIALS

MAYOR Mr. Gene Smith
CHIEF OF POLICE Mr. Robert Collier
FIRE CHIEF Mr. Ray Sanders (thru 13 April)
Mr. John Julian (effective 14 April)
ADMINISTRATOR: Mr. Ralph Kennedy
COMMISSIONERS: Mr. Jesse Lewis
Mr. Richard Rice
Mr. Jimmy Sanders
Mrs. Eva Sermons
Rev. Henry Witten

CRAVEN COUNTY COMMISSIONERS:

COUNTY MANAGER: Mr. Henry E. Dick
ASST. COUNTY MANAGER: Mr. Tyler B. Harris
CHAIRMAN: Mr. W.J. Wynne
VICE-CHAIRMAN: Mr. Sidney R. French
COMMISSIONER: Mr. Grover C. Lancaster
COMMISSIONER: Mr. George B. Nelson
COMMISSIONER: Mr. John B. Willis

MCAS ANNEXATION - QUESTIONS AND ANSWERS

On Monday, October 22, 1979, the Board of Commissioners of the City of Havelock adopted a resolution of intent to annex Cherry Point Marine Corps Air Station. This action was the first step in a process scheduled for completion in December.

Several questions have been raised about the effect of annexation. "Basically, the annexation will not affect the daily lives of personnel on board the Base," explained J. Troy Smith, Jr., City Attorney.

QUESTION - Why is the City of Havelock interested in annexing Cherry Point Marine Corps Air Station?

ANSWER - The Base and City traditionally have enjoyed a close relationship. For example, children from the Base have used the City's recreational facilities and participated in City recreational programs without restriction. At the same time, personnel from the Base have contributed a great deal of time and effort to coaching and supervising these very same programs. Annexation would formalize this working relationship. Furthermore, the Base and City are developing rapidly along their common boundary. Annexation is necessary for sound urban development. Finally, the increase in population will allow the City to obtain increased revenue sharing funds from State and Federal sources which will benefit all City residents.

QUESTION - How will the Base benefit?

ANSWER - Actions by the City and City policies often have an impact on people at the Base. Annexation will give Base personnel a voice in important local government matters. Increased revenue sharing funds will also allow the City to improve services such as recreational programs and facilities that Base personnel use and enjoy.

QUESTION - Will Base personnel be subject to any City taxes or be obligated to buy City tags for their cars, dogs or bicycles?

ANSWER - No. Only those persons claiming North Carolina residence will be subject to these taxes and obligations. They also will be allowed to vote in City elections.

QUESTION - Will there be any changes in Base operations?

ANSWER - No. The Base will continue to operate under Federal laws as a Federal military installation. The City will have no jurisdiction regarding operation of the Base.

QUESTION - Will the City Police Department have any jurisdiction over the Base?

ANSWER - Only to the same extent as the Craven County Sheriff's Department had jurisdiction prior to annexation. Most of the Base is under exclusive Federal jurisdiction. Civil law enforcement authorities have no jurisdiction in these areas. The Fort Macon and Slocum Village housing areas are the only parts of the Base where civil authorities will have any law enforcement jurisdiction. City Police will cooperate with authorities at the Base to ensure against interference with essential Federal Government functions in those two housing areas.

QUESTION - Do you foresee annexation having any sort of negative impact on Base personnel?

ANSWER - None whatsoever. The City will have only the same limited authority and jurisdiction that Craven County had over the Base prior to annexation. As far as Base personnel are concerned, annexation merely will replace Craven County with the City as the local civilian government with this limited jurisdiction and authority. If anything, annexation will improve Base personnel's relationship with local civilian government. They share many interests and concerns with the City at the present time. Annexation will give them a formal voice in City government affairs of vital interest.

REGISTRAR

DATE

ACTION COMPLETION DATE

FILE NUMBER

Staff Judge Advocate

N/A

SUBJECT: Annexation of MCAS, CPNC to the City of Havelock, NC

ACTION ASSIGNED TO:

ORIGINATOR

- 1 FOR APPROPRIATE ACTION
- 2 FOR COMPLIANCE
- 3 FOR FEASIBILITY
- 4 FOR COMMENT
- 5 FOR RECOMMENDATION

- F FOR CONCURRENCE
- G FOR INFORMATION
- H RETURN TO ORIGINATOR
- I FOR SIGNATURE
- J

REMARKS (DATED AND SIGNED)

Info:

To: C.G.
Via: C/S.

Sir:

The attached synopsis of the Annexation question as it effects MCAS, Cherry Point is forwarded for your information. No real action required for the Wing.

Very respectfully,
L. Bohler

A synopsis is attached
26 Nov 88
R. P. S.

ROUTE	CP CODE	DATE IN	DATE OUT	INITIAL	ADDRESSEE
					ASST CHIEF OF STAFF, G-1
					ASST CHIEF OF STAFF, G-2
					ASST CHIEF OF STAFF, G-3
					ASST CHIEF OF STAFF, G-4
					ASST CHIEF OF STAFF, COMPTROLLER
					ASST CHIEF OF STAFF, READINESS
					INSPECTOR
					CPD
					STAFF JUDGE ADVOCATE <u>26 Nov 88</u>
					SUPPLY
					ADJUTANT
					DIR. STANDARDIZATION AND SAFETY
					PROTOCOL OFFICER
					SPECIAL SERVICES
					POSTAL
					CAREER PLANNING
					PERSONNEL
					WING
					AIR CROBAT INTVL
					STAFF COUNCIL INTVL
					PHOTO IMAGERY INTERP
					SECRET/SSO
					CIT
					OPERATIONS
					NATOPS
					ATCO
					TRAINING
					G-3 PLANS
					MAINT
					TRC
					G-4 PLANS
					AWO
					AWO
					ORDNANCE

BNN LGS

26 Nov 88

COL TOKARZ
LT COL WELLINGTON

31 AUG 1988

GENTLEMEN:

THE ENCLOSED FILE IS A REPRODUCTION OF THAT MAINTAINED BY LT COL KELLER AT CHERRY POINT REGARDING THE ANNEXATION OF CPNC BY HAVELOCK IN 1979.

8/31/88

TO: DSOA E

VIC
K. W. J.
H. C. S. N. I. C.

F. I. I. I. I.

UNITED STATES MARINE CORPS
Marine Corps Air Station
Cherry Point, North Carolina 28533

J:RPW:pjd
5800

1979

From: Commanding General
To: Commandant Fifth Naval District
Via: Commander Eastern Division Naval Facility, Engineering Command

Subj: Proposed Annexation of Marine Corps Air Station, Cherry Point,
North Carolina, to the City of Havelock, North Carolina

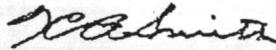
Ref: (a) Annexation Report by the City of Havelock dated 22 October
1979
(b) SECNAVINST 11011.29A of 11 November 1967

Encl: (1) Memorandum on Proposed Annexation of Marine Corps Air Station,
Cherry Point, North Carolina, to the City of Havelock, North
Carolina

1. Reference (a) placed the Commanding General, Marine Corps Air Station, Cherry Point, North Carolina, on notice of the City of Havelock's intention to annex the Air Station.
2. In accordance with reference (b), the Commandant of the Marine Corps, Commander Naval Facilities Engineer Command, and the Assistant Secretary of the Navy, Installation and Logistics, are advised that the City of Havelock, North Carolina has initiated formal proceedings for the annexation of Marine Corps Air Station, Cherry Point, North Carolina.
3. Enclosure (1) is an analysis of factors bearing on the subject annexation. The information presented in enclosure (1) is considered essential in order that all information currently available be made known to interested parties to assist in the preparation of a Navy and Marine Corps position on the subject annexation. The Craven County Board of Commissioners was unaware of the impact the proposed annexation would have on their fundings and as a result has not yet forwarded all significant information in that area. A more detailed breakdown of the problem will be forwarded under separate cover as soon as the information is made available to this command.
4. Some of the more troubling problems connected with annexation of the Air Station are unique to North Carolina because of the local governmental structure. However, many of the potential problems associated with annexation have been or will be faced by any installation that is confronted by the issue. Most of these problems could be resolved by statutory authority at the national level delineating the responsibilities and restrictions on local governmental entities that annex installations. Such statute should address the local government's ability to interfere with operation of the installation by use of their power to tax, particularly in the areas of indirect forms of taxation. Further, if a governmental entity is required to provide services to the annexed

installation, as a result of annexation, such services must be at a level that is equal to that provided prior to annexation.

5. After careful review of enclosure (1), the discussion, opinions, and recommendations expressed therein are approved. It is accordingly recommended that the proposed annexation be opposed.



K. A. SMITH

Copy to:

CMC w/Encl

ComDivNavFacEngCom w/Encl

AssistSecNav (I&L)

CG, 2dMAW

MEMORANDUM
ON
PROPOSED ANNEXATION
OF
MARINE CORPS AIR STATION
CHERRY POINT, NORTH CAROLINA
TO THE
CITY OF HAVELOCK
NORTH CAROLINA

A. Procedures. A municipal governing board desiring to annex an area must first pass a resolution expressing the intent of the municipality to consider annexation. This resolution must describe the boundaries of the area under consideration.

The resolution must also state that a report setting forth plans to provide services to the area to be annexed will be available at the office of the municipal clerk at least fourteen days prior to the date of the public hearing (see below). This report shall include maps showing the present and proposed boundaries of the municipality, the present major trunk water mains and sewer interceptors and outfalls and proposed extensions thereof, and the general land use pattern in the area to be annexed. The report shall also include the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. According to In re Annexation Ordinance, 225 N. C. 633 (1961), which construed an earlier identical statute, such plan may take into consideration all circumstances and provide only for services if and when needed.

The resolution must also fix a date for a public hearing on the question of annexation; the date for the hearing is to be not less than thirty days and not more than sixty days following passage of the resolution. Notice of the public hearing must be given by publication in a newspaper having general circulation in the municipality once a week for a least four successive weeks prior to the date of the hearing. At the public hearing

a representative of the municipality shall first make an explanation of the required report. Following such explanation, all persons resident or owning property in the area to be annexed, and all residents of the municipality, shall be given an opportunity to be heard. The municipal governing board shall, in accordance with a statutory edict, take into consideration facts presented at the hearing and shall have authority to amend the report with regard to the plan to service the area to be annexed.

At any regular or special meeting held no sooner than the seventh day following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing as the area to be annexed which qualifies for annexation and which the governing board has concluded should be annexed. The ordinance shall include specific findings that the area qualifies for annexation under law and that upon the effective date of the ordinance the municipality will have funds available in sufficient amount to finance required services or will have authority to issue bonds to finance such services.

From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied on a pro rated basis depending upon the effective date of the annexation.

II. IDENTIFICATION OF PROPERTY TO BE ANNEXED

The Marine Corps Air Station, Cherry Point, is located in Craven County, North Carolina and lies adjacent to the Northern city limits of the City of Havelock. Fort Macon Village is an outlying housing area surrounded by the City of Havelock. Slocum Village housing area is bordered on the North and East by the Air Station and on the South and West by the City of Havelock. Marine Corps Air Station, Cherry Point, North Carolina, is situated in the tidewater region of Eastern North Carolina and was established in 1941 as an Air Station. The Air Station encompasses 11,549 acres, and serves as the host to the Second Marine Aircraft Wing and the Naval Air Rework Facility.

III. TITLE DATA

The United States of America holds the following estate in the property proposed for annexation:

Fee Simple - - - - - 11,548.973 acres

IV. LEGISLATIVE JURISDICTION

A. Exclusive: By Section 104-7 of the North the State of North Carolina cedes exclusive jurisd the United States for purposes of Government. How the State Jurisdiction does not vest in the United States by this does not

DIS →

SSgt
Bonnie
Brooks

NIS - to
meet w/ Hamlett
0830 - Monday

United States Code, Section 225, requires formal acceptance by the head of the department having jurisdiction over the land. The Secretary of the Navy has accepted exclusive jurisdiction on 10,967.34 acres of the land acquired for MCAS, Cherry Point, (see Map Ex. D, Parcels 1, 2, 3, and 8). All these lands are within the area of the proposed annexation.

B. Proprietary: The United States has only a proprietary interest in 581.63 acres acquired in fee simple and all these lands are within the area of proposed annexation (see Map Ex. D, Parcels 4, 5, 6, 7, and 9). A request for acceptance of exclusive legislative jurisdiction of these 581.63 acres by the U.S. Government was forwarded from the Commanding General, MCAS, Cherry Point, on 30 September 1976. A first Endorsement by LANFDIV, dated 2 December 1976, concurred in the action to CO NAVFACENCOM (Code 20R). The second Endorsement, dated 22 December 1976, from Commandant, 5th Naval District, to CO NAVFACENCOM (Code 20R) also concurred in the action. A third Endorsement from CMC to CO NAVFACENCOM on 17 January 1977, forwarded the request for continuing action. To date, no action has been taken by CO NAVFACENCOM (Code 20R).

V. SUMMARY OF APPLICABLE ANNEXATION LAW

Under North Carolina General Statutes, Section 160A-33 et seq., (Ex. B) a municipal governing body with a population of less than 5,000 persons may annex by ordinance any area contiguous to the boundaries of the city and is discussed below.

I. ANNEXATION PROPOSAL AND BACKGROUND

On 22 October 1979, the City of Havelock passed a resolution of intent to annex all of Marine Corps Air Station, Cherry Point, North Carolina, to include the two outlying housing areas of Fort Macon and Slocum Village lying within the City of Havelock, North Carolina. (Ex. A) The City of Havelock is proceeding pursuant to the annexation provisions of North Carolina General Statutes Section 160A-33 et seq. (Ex. B). A public hearing in the matter has been scheduled for 26 November 1979, in accordance with General Statute 160A-37(a). The procedure requires that notice of the proposed annexation be advertised for four consecutive weeks; notification is scheduled to be published in the Havelock Progress on 31 October 1979, 7 November 1979, 14 November 1979, and 21 November 1979. Voting by the City Board of Commissioners on the annexation ordinance is presently scheduled for 3 December 1979.

The annexation question is not new in that the City of Havelock has on at least two prior occasions (September 1975 and May 1977) expressed a desire to annex the Fort Macon and Slocum Village base housing areas. Both of these attempts were apparently tabled by the City of Havelock. A copy of a letter from the Mayor of Havelock, dated 3 May 1977, along with the City of Havelock Annexation Feasibility Study dated May 1977, is enclosed as Exhibit C.

CONTENTS

- I. ANNEXATION PROPOSAL AND BACKGROUND
- II. IDENTIFICATION OF PROPERTY TO BE ANNEXED
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- V. SUMMARY OF APPLICABLE ANNEXATION LAW
- VI. REASONS ADVANCED BY THE CITY OF HAVELOCK FOR ANNEXATION
- VII. INTERESTS OF OTHER POLITICAL SUBDIVISIONS
- VIII. DISCUSSION OF EFFECTS OF ANNEXATION
- IX. OPINIONS AND RECOMMENDATIONS

JOINT LAW CENTER
Marine Corps Air Station
Cherry Point, North Carolina 28533

J-smf/RJD
5800
13 December 1978

ACTION BRIEF

From: Staff Judge Advocate
To: Commanding General, Marine Corps Air Station
Via: Chief of Staff

Subj: Annexation

Encl: (1) June 1977 Annexation Study

1. Problem: Should the proposed annexation by the City of Havelock of Fort Macon and Slocum Villages be encouraged or discouraged.

2. Background: The annexation question is not new in that the City of Havelock has on at least two prior occasions (September, 1975, and May, 1977) expressed the desire to annex the Fort Macon and Slocum Villages base housing areas. Both of these attempts were apparently tabled by the City of Havelock. The current interest in annexation has again surfaced the issue and requires appropriate study relative to the legal ramifications of annexation.

3. Discussion:

A. Introduction: The most recent annexation study completed by this office in June, 1977, is included herein as enclosure (1). Much of what is set forth in the enclosure still has merit relative to the question of whether or not annexation is in the best interest of the Government. The following discussion will set forth those salient points which are considered the "bottom line" answers to the primary questions raised by the annexation issue.

Q. Does the City of Havelock have the statutory authority to annex the Fort Macon and Slocum Villages base housing areas?

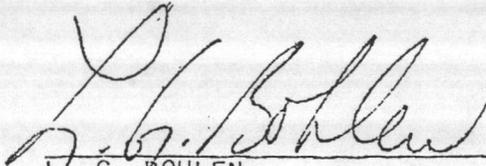
A. Yes, North Carolina General Statutes, Sections 160A-33, et seq, provide the City of Havelock with the necessary authority to annex the areas in question.

Q. What procedures must the City of Havelock follow relative to annexation?

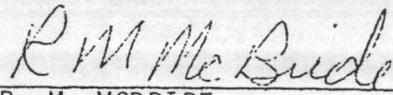
A. Annexation Procedure

Under the provisions of the above statute, a municipal governing board wanting to annex territory must first pass a resolution expressing the intent of the municipality to consider annexation.

The above memorandum on annexation has been reviewed and approved
this 8th day of November, 1979.



L. G. BOHLEN
Colonel, U.S. Marine Corps
Director of Legal Services
Marine Corps Air Bases
Eastern Area



R. M. MCBRIDE
Major, U.S. Marine Corps
Staff Judge Advocate
Marine Corps Air Station
Cherry Point, North Carolina

Of immediate concern is the reduction of funding to Craven County as a result of annexation. The effects would immediately be felt by both military and civilian personnel. This reduction would adversely effect the school system and the airport expansion. This would certainly effect the overall morale of this command as well as the Second Marine Aircraft Wing and the Naval Air Rework Facility.

The staff study group identified a myriad of areas, as pointed out above, which could in the future have a significant adverse effect on the Air Station. Of all the potential problems, those connected with taxation are the most troubling. At present, the city has indicated it does not intend to raise revenue by imposing taxation on Air Station entities. However, once annexation is completed, there is nothing to prevent a future less friendly city government from attempting to impose a comprehensive tax program with respect to the Air Station.

At present, the Air Station is self-sufficient in the areas of fire protection, sewer, water, garbage, etc. It is to be hoped that the Air Station budget would never be reduced upon the justification that the city is responsible for providing these services. It is extremely doubtful that the city would be capable of providing these services at anywhere near the same level at which they now exist.

As the annexation of the Air Station to the city is fraught with potential problems, it is recommended that annexation be opposed.

the runway to make the airport jet capable. The reduction of funds to Craven County would adversely effect this project (Ex. K). A nearby airport serviced by a major carrier is essential for the orderly transition of military personnel to and from the Air Station. The additional travel time and costs which would result should the airport project be discontinued would have a deleterious effect on this command, military personnel, and civilian employees.

(3) Police Protection. All civilian employees and many military personnel reside outside the Air Station. A large amount of these people reside in Craven County and rely upon the Craven County Sheriff's Department for police services. A reduction in county funding would adversely effect the County Sheriff's Department (Ex. K).

(4) Recreation. The county maintains many recreation areas to include parks and boat launching facilities. A reduction in the county's funding would effect recreational services (Ex. K).

IX. OPINIONS AND RECOMMENDATIONS

It should be stressed that annexation is certainly not a quid pro quo arrangement for the Air Station. The Air Station does not stand to gain anything from annexation. Further, the annexation of this Air Station should not be viewed in a vacuum. If successful in annexing the Air Station, it can reasonably be anticipated that the city of Jacksonville will attempt to annex Camp Lejeune and Marine Corps Air Station (Helicopter), New River.

and property to be "minimal."

This resolution reinforces the belief that the city is only interested in state and federal revenue sharing funds and that adverse effects in the form of increased costs, if any, from potential license, franchise, and property taxes on personnel and contractors will be negligible.

H. Loss of Funds for Craven County. As a result of the annexation, Craven County will lose part of its population base. The reduction in population base will effect Craven County in four areas:

(1) County Schools. All schools both elementary and secondary in the Havelock - Cherry Point area are county schools. The City of Havelock does not have a school system of its own nor does the Air Station possess a Department of Defense school system. Most area children including dependents of military personnel and civilian employees attend the county schools. A significant reduction in county funding would definately have an adverse effect on the county schools system (Ex. K).

(2) Airport. The Air Station is presently served by the Simmons-Knott Airport. Several months ago, Piedmont Airlines, the sole carrier serving Simmons-Knott at the time, announced its intention to discontinue service to Simmons-Knott due in part to the inadequate runway. At present, only a small commuter airline operates out of Simmons-Knott Airport. The next major airport is over fifty (50) miles away. At present, Craven County is planning to assist in the funding of resurfacing and lengthening

(4) Utility Franchise Tax. A franchise or privilege tax is imposed on utilities such as electric light and power companies (N.C.G.S. Section 105-116) and on telephone companies (N.C.G.S. Section 105-120) by the State of North Carolina. Annexation would make a difference in regard to these taxes because a portion of the franchise tax (3% in the case of both electric and telephone companies) is redistributed to the municipality. The gross receipts within Havelock would be increased appreciably by adding the receipts from electricity used and telephone service used at the Air Station to the Havelock gross receipts.

(5) General. Annexation of the Air Station would have a significant impact on the overall tax picture of Havelock as far as rebates are concerned. Each of the taxes discussed above depends on ad valorem taxation, population, and/or gross receipts in the municipality to determine the amount of redistribution to the municipality and these would be affected by the annexation of the base to the city.

G. City Position on Taxation. The City Board of Commissioners by unanimous vote on 22 October 1979, passed two resolutions collateral to the resolution of intent to consider annexation (Ex. J). The resolution involving local taxation states that the purpose of the annexation is not to raise revenue by taxing "federal government personnel and property thereon." The resolution further states that the city expects revenues derived from taxes, fees, and charges on nongovernmental persons, activities,

by the amounts collected within the county and partly by the population of the county according to the latest annual estimates of the state government. These determinations are made on the basis of the nature of the intangible property. The amounts allocated to each county are in turn divided between the county and the municipalities therein in proportion to the total amount of ad valorem taxes levied by each during the preceding fiscal year. A possible adverse effect could result if the city pursues increased ad valorem taxation.

(3) Sales and Use Tax Rebate. Either by election or by resolution of the board of county commissioners, counties can impose a (1%) one per cent local sales and use tax on their inhabitants (N.C.G.S. Section 105-463 et seq). Under state law, the board of county commissioners decides whether the state will redistribute the net proceeds from this tax based on the population of the county and its municipalities or based on the ad valorem taxes collected in the same areas during the preceding fiscal year.

Havelock is located in Craven County which has levied such a tax; the amount of the taxes returned to Craven County and Havelock is currently based upon their respective populations. Population estimates of all counties and municipalities are compiled each year by the Director of North Carolina Department of Administration; thus if annexation occurs, the population of Havelock would increase, having an almost immediate fiscal effect.

is important to the annexation question because the money is allocated to the cities based on the population in the city and the miles of streets in the city.

According to Section 136-41.1, seventy-five per cent of the money shall be distributed among the eligible municipalities of the State in the percentage proportion that the population of each eligible municipality bears to the total population of all eligible municipalities according to the latest annual estimates of population as certified to the Secretary of Revenue by the Secretary of the North Carolina Department of Administration, and twenty-five per cent of the money shall be distributed among the eligible municipalities of the State in the percentage proportion that the mileage of public streets in each eligible municipality which do not form a part of the highway system bears to the total mileage of public streets in all eligible municipalities which do not constitute a part of the State highway system. Annexation would significantly increase the population of the city and therefore add to its tax rebate. However, since the Air Station would be maintaining its own streets, the city would not receive any rebate on the basis of increased mileage of public streets. No adverse effect is anticipated.

(2) Intangible Personal Property Tax. Another tax that would be affected by annexation is the intangible personal property tax levied pursuant to North Carolina General Statutes, Section 105-198 et seq. The revenue which the state redistributes to the county is determined partly

The possible adverse effect of these ordinances is eliminated by the fact that the United States is allowed to perform its functions without conforming to the police regulations of a state. Arizona v. California, 283 U.S. 423 (1931).

The Constitution of the United States gives the Federal Government power to make all laws necessary and proper for carrying out the functions of the military, and when this power is exercised by statute or otherwise, the resultant rules and regulations are supreme over conflicting state rules. Johnson v. Sayre, 158 U.S. 109 (1895). Thus, since the Federal Government has enacted extensive rules and regulations to govern the military, and the Havelock housing codes, inspection rules, noise laws and other enactments would appear to interfere with the federal functions carried out by the Marine Corps through its mission, and the Government of the United States is supreme within the sphere of action where it has acted (McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316), the city should not be able to interfere with the Marine Corps in these areas.

F. Statutory Per Annum Allocation of State Revenues.

(1) Gasoline Tax Rebate. Pursuant to North Carolina General Statutes, Section 136-41.1, a part of the state gasoline tax is appropriated to cities and towns by the state. By virtue of a 1971 amendment, the amount rebated is one cent on every gallon of gasoline taxed. The allocation of this tax

North Carolina General Statutes, Section 105-41 establishes a license fee of twenty-five (\$25) for practicing attorneys, physicians, veterinarians, surgeons, dentists, photographers, oculists, and many other businesses and professions. Section H of the same statute provides that for all of the businesses and professions enumerated under N.C.G.S. Section 105-41, cities, counties, or towns shall not levy any license tax. Therefore, since most conceivable professions are covered under this statute, the Havelock Code would have little impact on the professions practiced on the base from a tax standpoint. However, for businesses not enumerated by Section 105-41, the Havelock Code would permit imposition and collection of a tax. It is anticipated, however, that a question might arise as to whether or not the business is actually being conducted by the Marine Corps and not by the individual personnel, and this might render the tax uncollectable.

(d) Dog and Cat Licensing. North Carolina General Statutes, Section 160A-212 provides authority for cities to place license taxes on domestic animals, including dogs and cats. By virtue of this general authority, Havelock Code Section 3-18 requires the owner of a dog or cat to pay a license tax of \$1.00 per year. The city attorney has publicly stated that only North Carolina residents would be subject to this tax (Ex. E) and in addition has prepared an ordinance to exempt the Air Station (Ex. I).

E. Effect of City Regulatory Ordinances on Base Operations. If regulatory ordinances presently in effect in the City of Havelock were enforced on the Air Station, the effect would be profound.

used in Section 574 (SSCRA), refers only to charges essential to the functioning of the host state's licensing and registration laws. It appears that there must be a reasonable relation between the license fee and the cost of licensing the car before the serviceman can be required to pay it. The test to determine if the license fee of a state is within the federal immunity granted to nonresident servicemen in such a state is whether inclusion would negate the power of the state to enforce the nonrevenue provisions of its motor vehicle laws. It is not known whether this tax could be validly imposed; however, the city attorney has publicly stated that base personnel would not be subject to such a tax unless they were North Carolina residents (Ex. E). The original draft of Exhibit E was personally delivered by the city attorney to the Staff Judge Advocate prior to its publication.

(c) Professional and Business License Taxes. Havelock Code Chapter 8, levies a tax on every business, trade, or profession enumerated by the North Carolina Revenue Ordinances. (Ex. H) The tax levied is the maximum allowed by North Carolina law. With the city population increased by annexation, the maximum tax can also be increased as the North Carolina Statutes specify the maximum tax on the basis of population. The Havelock Code at Section 803 further provides that it is unlawful to engage in any business, trade, employment, or profession for which a license is required by the city without first having obtained and paid for such license.

North Carolina General Statute, Section 160A-209, authorizes a tax on "property," a word which was construed in cases such as Redmond v. Commissioners of Town of Tarboro, 106 N. C. 122 (1890), as including moneys, credits, investments, and other choses in action. Under these sources of authority, intangible personal property could be subjected to the city ad valorem tax. Again, however, Section 574 (SSCRA) would seem to preclude the imposition of the tax on intangible personal property of servicemen by specifically providing that neither tangible nor intangible personal property will be deemed to have a situs for taxation in any state where the serviceman is present only because of his military orders.

(b) Automobile License Tax. The City of Havelock currently imposes a one dollar (\$1.00) tax on each resident motor vehicle licensed by the state and kept within the corporate limits of the city (Havelock Code Section 10-61). This tax is imposed under authority of North Carolina General Statutes, Section 160A-213, and \$1.00 is the maximum tax allowed pursuant to North Carolina General Statutes, Section 20-97.

North Carolina General Statutes, Section 20-97(a) states that all taxes levied pursuant to its authority are "intended as compensatory taxes for the use and privileges of the public highways of this State." The Supreme Court, in considering Section 574 (SSCRA) ruled that in order for the nonresident soldier to be immune from bona fide license fees imposed by the host state, he must have actually paid a similar fee to his state of domicile (California v. Buzard, 382 U.S. 386 (1966)). The Buzard case went further and concluded that the phrase, "licenses, fees and excises," as

\$100 appraised value of all taxable property within the city, for any of the thirty-four purposes listed in subsection (c) of this statute. Under subsection (b) of the above statute, the city may impose property taxes above the \$1.50 limitation if the purpose is to pay city debts such as bonds, to supply an unforeseen revenue deficit, or to provide for necessary law enforcement personnel and equipment to suppress civil disorders. In addition, under subsection (e) of the above statute, the amount or rate of a property tax levied for an authorized purpose is not restricted if the tax is approved by popular vote. Pursuant to this statutory authorization, the City of Havelock imposed an ad valorem tax of \$0.60 on each \$100 of property in 1979. This tax is determined each year as a part of the city budget ordinance (Ex. F).

If the city does annex the Air Station, this ad valorem tax would not be expected to effect the tangible personal property of base personnel in light of Section 574 of the Soldiers' and Sailors' Civil Relief Act, which states that by being stationed under orders in a locale outside of the person's home state he does not become a resident nor domiciled in the new place. Therefore, for tax purposes, Section 574 keeps the tangible personal property of Marine Corps personnel from acquiring a situs for tax purposes in his state of station and therefore the city should not be able to collect taxes from Marine Corps personnel based on this tangible personal property.

Vision Cable of Craven Inc. a 15 year franchise within the city (N.C.G.S. § 160A-214). The ordinance, pursuant to North Carolina General Statutes 160A-139, also makes it unlawful for any other company to operate within the city without a franchise. If annexation occurs, two companies would be operating within the city as a result of the Air Station's contract with Alert Cable TV. This situation would present a fertile ground for litigation, and possible increased costs to the Air Station if Alert Cable TV becomes subject to the city's three per cent franchise tax. In informal discussion, the city attorney has stated he would oppose any tax or interference whatsoever with the Air Station's contract. The city attorney is examining this problem and official action to exempt Alert Cable TV from any tax or franchise violation is anticipated. Absent such official action, the situation presented as a result of annexation could have an adverse effect with respect to prospects for future litigation and increased costs. The cable television franchise is the only franchise tax which Havelock can impose under North Carolina law.

D. Potential Increased Costs to Personnel. A number of areas exist in the Havelock city code that might serve to impose additional costs on military and federal personnel if annexation occurs.

(1) Taxes currently in effect.

(a) Ad Valorem Tax. By authority of North Carolina General Statute, Section 160A-209, the city can levy a tax of up to \$1.50 on each

(5) Steam Heat. Steam heat is provided by MCAS, Cherry Point.

(6) Propane Gas. Land and equipment is owned by MCAS, Cherry Point and maintenance and purchase of gas is by contract.

(7) Water. Water services are provided by MCAS, Cherry Point's own water/filteration system.

(8) Sewage. Sewage service is provided by MCAS, Cherry Point's sewage disposal system.

(9) Solid Waste Disposal. The three off base housing areas (Slocum, Fort Macon, and Hancock Villages) solid waste disposal is provided by contract and disposed of in Craven County landfills. All main base solid waste is disposed of in base sanitary landfills by MCAS, Cherry Point personnel.

(10) Schools. The Air Station operates no school system. All school children are bused by the county to county schools within the city and Craven County except for a small number of students who attend the local parochial school located in the city. It is anticipated that annexation will have an adverse effect on the present system. (see H.(1). below)

(11) Cable Television. Service is provided to MCAS, Cherry Point by Alert Cable TV, Inc. by contract negotiated by Atlantic Division, U.S. Navy. The existing city cable television franchise ordinance (Ex. G) grants to

and is normally provided only when requested by military authorities. It is not anticipated that the present situation will be altered by annexation. City police and Air Station police will continue to cooperate as they have in the past.

C. Discussion of Services. All services discussed below are provided by the Air Station and no change is anticipated as a result of annexation with the possible exception of the Cable Television service.

(1) Police Protection. This service will continue as it presently exists. No changes are anticipated (see discussion, supra).

(2) Fire Protection. Fire protection at present is provided by the Air Station Fire Department. Mutual firefighting agreements exist with the city of Havelock and all nearby municipalities and political subdivisions.

(3) Telephone. Carolina Telephone and Telegraph Company entered into General Contract Number NOy (U) 28287 with the Department of the Navy to provide the Station with telephone/teletypewriter service effective 1 July 1953 until terminated by either party upon 30 days written notice. This contract is still in effect.

(4) Electrical Distribution. Service provided to MCAS, Cherry Point from Carolina Power and Light Company by contract negotiated by Atlantic Division, U.S. Navy.

Ex. G); and

(e) Various license taxes for carrying on certain businesses, trades, and occupations within the city (Chapter 8, City Code, Ex. H) (see discussion infra).

The only one of these taxes which could be levied directly against the government would be the ad valorem property tax. The principle of inter-governmental tax immunity should obviously protect the government from collection of the tax. While title to property is in the United States, no matter for what purpose it was acquired or held, such property is exempt from taxation.

(2) Taxes on United States Contractors. Section 105-54(g) of the North Carolina General Statutes permits cities to levy annual privilege license fees on contractors and construction companies. The maximum tax is \$10.00 per annum. Chapter 8 of the city code makes this maximum rate applicable in Havelock.

B. Services to be Furnished by the City. The City Report of Annexation (Ex. A, part V) states that the city intends to provide no services beyond those presently provided. The city does recognize its pre-existing responsibility to provide police protection for civilian personnel residing in Fort Macon and Slocum Villages. These housing areas are patrolled by military police as offenses committed by military personnel in these areas are within the jurisdiction of the Uniform Code of Military Justice. As a practical matter, civilian police services in these areas is not substantial

The City of Havelock lies between Newport and the Air Station. The city proposal has received widespread coverage through the newspapers distributed throughout Eastern North Carolina. There has been no television coverage to date of any significance.

VIII. DISCUSSION OF EFFECTS OF ANNEXATION.

A. Potential Increased Costs to the Government.

(1) Taxes. The North Carolina General Statutes authorize a city to levy various taxes (N.C.G.S. § 160A-206-215) and city ordinances have imposed the following ones:

(a) A property tax at the rate of .60 per \$100.00 of the appraised value of the property subject to taxation (Section 8, City Budget Ordinance, Ex. F);

(b) A one dollar privilege tax per annum on keeping a dog or cat (Section 3-18, City Code);

(c) A one dollar per annum license tax on resident motor vehicles licensed by the state and kept within the city limits (Section 10-61, City Code);

(d) A cable television franchise tax at the rate of three percent of the annual gross subscriber revenues from subscribers residing in the city (Ordinance granting to Vision Cable of Craven Inc. a franchise, to Vis

around their common boundaries; (2) Air Station traffic and commerce flow to and from the city; (3) children from the Air Station participate in city athletic programs and enjoy city recreational facilities without restriction; and (4) many government employees presently reside in the city as well as a large number of retired government personnel. The city is citing sound urban development as the reason for annexation (Ex. A, Part I).

Notwithstanding the city's official statement and rationale for annexation, the actual reason is the city's realization of new revenues from state and federal revenue sharing programs as a result of an increase in the city's population through annexation (Exs. C and E). Annexation of the Air Station would recognize the community of interests between the city and the Air Station and would make revenues available to the city to satisfy the increasing demands for city services as a result of its current rapid development.

VII. INTERESTS OF OTHER POLITICAL SUBDIVISIONS

A. Craven County. The Air Station is located wholly within Craven County, North Carolina. Exhibit K indicates that Craven County is vehemently opposed to annexation as it would result in a drastic reduction in revenue to the county. An estimated loss of \$300,000 (Ex. K) is anticipated if the Air Station is annexed.

B. Other Municipalities. No other municipality has expressed any interest in the proposed annexation. Newport, North Carolina, is the next closest municipality located seven miles East of Havelock in Carteret County.

B. Right and Forms for Protest. Within 30 days following passage of an annexation ordinance, any person owning property in the annexed territory who believes he will suffer material injury by reason of the failure of the municipal governing board to meet the statutory requirements (see above) may file a petition in the superior court of the county in which the municipality is located seeking review of the purported annexation. Such a petition shall set forth what exceptions are taken and what relief is sought. Within five days after the petition is filed with the court, the person seeking review must serve copies of the petition by registered mail, return receipt requested, upon the municipality. Before or during the proceeding, any petitioner may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. This review shall be conducted by the court without a jury. Upon completion of the review proceedings, the court may affirm the action of the municipal governing board without change, or it may remand the ordinance to the governing board for further proceedings or for amendment of the boundaries or of the plan for providing services. Any party to the review proceeding may appeal to the North Carolina Court of Appeals.

VI. REASONS ADVANCED BY THE CITY OF HAVELOCK FOR ANNEXATION

The Board of Commissioners of the City of Havelock have advanced the rationale of shared interests and growth, stating that both the Air Station and the city are: (1) experiencing rapid growth especially in the area

a representative of the municipality shall first make an explanation of the required report. Following such explanation, all persons resident or owning property in the area to be annexed, and all residents of the municipality, shall be given an opportunity to be heard. The municipal governing board shall, in accordance with a statutory edict, take into consideration facts presented at the hearing and shall have authority to amend the report with regard to the plan to service the area to be annexed.

At any regular or special meeting held no sooner than the seventh day following such public hearing, the governing board shall have authority to adopt an ordinance extending the corporate limits of the municipality to include all, or such part, of the area described in the notice of public hearing as the area to be annexed which qualifies for annexation and which the governing board has concluded should be annexed. The ordinance shall include specific findings that the area qualifies for annexation under law and that upon the effective date of the ordinance the municipality will have funds available in sufficient amount to finance required services or will have authority to issue bonds to finance such services.

From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied on a pro rated basis depending upon the effective date of the annexation.

A. Procedures. A municipal governing board desiring to annex an area must first pass a resolution expressing the intent of the municipality to consider annexation. This resolution must describe the boundaries of the area under consideration.

The resolution must also state that a report setting forth plans to provide services to the area to be annexed will be available at the office of the municipal clerk at least fourteen days prior to the date of the public hearing (see below). This report shall include maps showing the present and proposed boundaries of the municipality, the present major trunk water mains and sewer interceptors and outfalls and proposed extensions thereof, and the general land use pattern in the area to be annexed. The report shall also include the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. According to In re Annexation Ordinance, 225 N. C. 633 (1961), which construed an earlier identical statute, such plan may take into consideration all circumstances and provide only for services if and when needed.

The resolution must also fix a date for a public hearing on the question of annexation; the date for the hearing is to be not less than thirty days and not more than sixty days following passage of the resolution. Notice of the public hearing must be given by publication in a newspaper having general circulation in the municipality once a week for a least four successive weeks prior to the date of the hearing. At the public hearing

MEMORANDUM FOR THE RECORD

On 2 October 1979, a phone call was initiated by Captain R. P. WALTON, Joint Law Center, Marine Corps Air Station, Cherry Point and Colonel R. M. RICHARDS, U.S. Air Force, Staff Judge Advocate, Seymour Johnson Air Force Base, North Carolina. In regards to annexation of Seymour Johnson, Colonel RICHARDS had the following comments:

- a. WORKS EXTREMELY WELL.
- b. Only one major problem since January 1977 and that was over assumption of jurisdiction. The Air Force Base took jurisdiction but the resulting GCM was overturned by CMR and local district attorney was extremely upset, however, excellent working relationship with new district attorney.
- c. The city even bids to supply essential services such as garbage. The Staff Judge Advocate feels this has helped keep costs down.
- d. Major advantage is assumption of cases that would ordinarily be handled by Federal Magistrate are handled by local authorities whenever possible.

On 2 October 1979, a phone call initiated by Captain R. P. WALTON, Joint Law Center, Marine Corps Air Station, Cherry Point and Colonel T. W. BROWN, U.S. Army, Staff Judge Advocate, Fort Bragg, North Carolina. In regards to annexation Colonel BROWN had the following comments:

- a. Fort Bragg has not been annexed. The reason being that both Fayetteville and Spring Lake wanted to annex. Colonel did not get involved at the outset but stepped in later and negotiated settlement where both sides voluntarily entered into a permanent injunction which prohibits annexation proceedings by either side.
- b. From a legal standpoint the major objection to annexation is the local city taxes. Five dollar dog license, three dollar city vehicle tag, etc.
- c. Colonel BROWN was the Staff Judge Advocate at Fort Richardson Alaska when it was annexed. There were no problems and the city and base entered into an agreement exempting personnel who resided on base from paying city taxes.



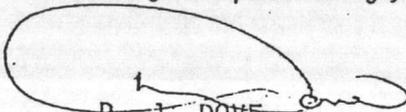
R. P. WALTON

J-smf/RJD
5800
13 December 1978

5. Recommendation:

If the City of Havelock does actively pursue annexation it is recommended that a study group be convened to include, at a minimum, the Director, I & L; The Facilities Engineering Officer, the Provost Marshal, and the Staff Judge Advocate. Such study group should be tasked to conduct an indepth study on the effects of annexation and, more specifically, to prepare the comments and recommendations which ultimately must be forwarded to the District Commandant.

Very respectfully,



R. J. DOVE

Copy to:
I&L (w/o encl)

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13 December 1978

(a) Fire protection. It is not entirely clear whether the inclusion of a military reservation within the limits of a municipality through annexation gives rise to an obligation to furnish fire fighting service in the annexed area. This question has not been faced squarely by the courts, although several have had occasion to consider and discuss it in cases where the validity of taxes imposed by municipalities upon persons in federal enclaves was in issue. Where the issue of fire protection was discussed in court decisions, it was generally held that if a municipality subjects the federal enclave to taxation, in any degree, it then assumes an obligation to provide for the needs of persons and property within the taxable area. It is noted, however, that the City of Havelock has previously indicated it would provide fire protection for the proposed annexation areas. This would be done by the Havelock Volunteer Fire Department. The protection, would not, in my opinion, be comparable to that provided by our full time staff.

(b) Maintenance of roads, streets and street lights. If the areas in question were annexed by the City of Havelock, no change would be noted in the Air Station obligation to maintain its own roads and streets. There are no public highways passing through the Fort Macon and Slocum Villages areas. If such public highways existed, certain obligations for maintenance would pass from the Air Station to the City of Havelock.

(c) Utilities. The Base's water supply, sanitary sewerage, refuse collection and solid waste disposal are owned and operated by the Government. Annexation by the City of Havelock should place no additional burden on the Government with respect to any of the foregoing. In fact, the City has indicated that it would not provide services until some future date (enclosure (4) to enclosure (1)). Refuse collection could ultimately be done by the City under a contract arrangement with the Base, should such arrangement be mutually desirable to both parties.

(d) Police jurisdiction

In this area, as in all other areas of annexation, it is important to remember that the City, by annexation, cannot acquire more jurisdiction than the state and county have at the present time. Annexation of the proposed housing areas will not impact upon military police jurisdiction. The parcels of land are proprietorial interests only--which means that State law applies to them and State authorities already have police jurisdiction in the areas. We also have police jurisdiction because of our proprietorial interest. Coordination of the two interests is a matter for agreement between the Station and the civilians. It is noted, however, that should we ultimately assume exclusive jurisdiction, then the police function would be ours for both military and civilians.

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(e) Schools. Should the proposed area be annexed by the City of Havelock, no change in the current school system is anticipated.

C. Possible adverse effects upon the Marine Corps Air Station, Cherry Point, North Carolina.

(1) Adverse effects upon the mission of the Command

None have been noted except as may be related to the possible increase of costs as noted in paragraph 2 below.

(2) Adverse effects on arrangements for and costs of essential services. This appears to be the only basis for opposing annexation. Although annexation by the City of Havelock will have no immediate impact upon such costs, they may be reasonably presumed to occur in the future. As the City of Havelock continues to grow, so will its problems grow. It can be reasonably conjectured that in the future additional costs will have to be levied upon the citizens of the City of Havelock. This would, of course, include contractors and other persons doing or conducting private business aboard the proposed annexed areas. It also may include additional costs for Marines living in the area such as City Automobile License Tax, Bicycle Licensing, Dog Licensing, etc., etc., imposed by present or future city ordinances. Although annexation by the City of Havelock would have no direct effect upon the Marine Corps Air Station taxes, it has been previously noted that the property of lessees and contractors would be within its taxing powers. It is fairly assumed that an increase in taxes to these persons and entities would eventually be passed on to the base in the form of higher prices. If additional city taxes were levied on contractors, increases in construction costs on projects such as new construction, etc., are likely to accrue if annexation is accomplished.

4. Conclusion:

It is apparent that some benefit to the City of Havelock might accrue should annexation of the proposed areas occur. It should be noted, however, that no immediate benefit has been noted except in the allocation of federal and state funds based on increased population. Benefits are to be considered in the futuristic sense only. On the other hand, no realistic advantage to the United States Government has been discovered. To the contrary, annexation could result in substantial adverse effects upon the arrangement for and costs of essential services and thereby eventually affect the mission of the base.

state acquires a portion of the state's jurisdiction over such annexed military reservation. The annexation results in a transfer of the exercise of the state's governmental functions within the annexed area from one political subdivision of the state, usually the county, to another political subdivision of the state which incorporates the military reservation within its territorial limits. The extent of the governmental functions which the annexing political subdivision may exercise within the annexed military reservation will depend on the powers that have been lawfully delegated to it by Congress and by the parent state. Unfortunately, these powers are not always clearly defined or determinable with the degree of certainty that is desirable.

(2) Effect on population of City of Havelock

In the event of annexation by the City of Havelock, the city's population would, of course, increase by the number of military personnel and their dependents lawfully residing aboard the areas in question.

(3) Tax consequences

A municipality can have no broader power to tax than the state possesses, although in certain cases an annexing municipal corporation can superimpose its own additional tax upon a tax already lawfully levied by the state or county. The tax consequences of annexation, in the instant case, will vary according to the character of the property involved and the situs of its ownership.

(a) Federal Property. The basic rule of taxation is that the Federal Government and its property are immune from state and local taxes except to the extent that Congress has expressly waived this immunity. The Marine Corps Air Station, Cherry Point, is not now subject to state and local taxation and will not be so liable for taxation absent express Congressional authorization. In this regard, federal immunity prohibits state and local taxation of any food or goods sold through post exchanges, commissaries and military clubs, although the federal "Buck Act" authorizes state taxation of motor fuel sold aboard a military reservation for non-governmental use.

(b) Personal Property and Income of Non-Resident Military Personnel. The personal property and income of military personnel is not protected by federal immunity. Nevertheless, the power of local political subdivisions to tax personal property interests has been limited insofar as service members are concerned by the provisions of the Soldiers and Sailors Civil Relief Act of 1944. Thus, personal property and income of armed forces members aboard the base is generally exempt from taxation, and annexation would not alter this situation.

(c) Non-Governmental Entities and Domiciliaries. Although judicial decisions are somewhat in conflict, the current trend is to extend the power of the state and its political subdivisions to tax non-governmental entities and activities aboard military reservations. The Federal "Buck Act" paved the way for local political subdivisions to impose certain sales, use and income taxes upon non-governmental reservations. It now appears clear that the civilian employees, bona fide domiciliaries, and the employees and property of concessionaires and contractors on annexed military reservations are subject to the taxing power of the annexing municipality. It should be noted that during the construction phase of any future military projects, such as housing, buildings, roofings, etc., the contractors might be subject to personal property and license taxes by an annexing municipality. The general rule is that contracting with the federal government confers no implied immunity from nondiscriminatory taxation, unless Congress by statute confers such immunity. The tax liability of government contractors is pertinent only in that annexation may put more such contractors within the city's taxing power. Thus, annexation may in future practice subject contractors to greater tax liability and in turn increase future costs to the government. Nevertheless, any attempt to quantify the potential increase in contractual costs which might flow from annexation would be conjectural at this point.

(4) Exercise of municipal functions within annexed military reservations. As a general rule, when a municipality extends its boundaries, the new area is subject to the same burdens of taxation and is entitled to the same privileges, protection, and advantages as property already within the municipal limits. Although Federal property annexed by a political subdivision is not taxable, it is now firmly established that cities annexing military reservations may levy and collect various taxes upon the persons and private property within such military reservations. In numerous decisions, the courts have stated that the chief purpose of a municipal corporation is to supply local services to all residents within the territorial limits of the municipal corporation, and that the needs of the municipality and the benefits to the property and residents thereon are the sole justification for inclusion of land within municipal limits. However, the cases in which these pronouncements were made related only to the general powers of municipal corporations where private lands were involved, and there has been no issue before the courts concerning the powers and obligations of a municipal corporation with respect to a federal enclave located within the territorial limits of a municipal corporation.

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5800
13 December 1978

which qualifies for annexation and which the governing board has concluded should be annexed. The ordinance shall include specific findings that the area qualifies for annexation under law and that upon the effective date of the ordinance the municipality will have funds appropriate in sufficient amount to finance required services or will have authority to issue bonds to finance such services.

From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality. The newly annexed territory shall be subject to municipal taxes levied for the fiscal year following the effective date of the annexation.

Right of and Forms for Protest

Within 30 days following passage of an annexation ordinance, any person owning property in the annexed territory who believes he will suffer material injury by reason of the failure of the municipal governing board to meet the statutory requirements (see above) may file a petition in the superior court of the county in which the municipality is located seeking review of the purported annexation. Such a petition shall set forth what exceptions are taken and what relief is sought. Within five days after the petition is filed with the court, the person seeking review must serve copies of the petition by registered mail, return receipt requested, upon the municipality. Before or during the proceeding, any petitioner may apply to the reviewing court for an order staying the operation of the annexation ordinance pending the outcome of the review. This review shall be conducted by the court without a jury. Upon completion of the review proceedings, the court may affirm the action of the municipal governing board without change, or it may remand the ordinance to the governing board for further proceedings or for amendment of the boundaries or of the plan for providing services. Any party to the review proceeding may appeal to the North Carolina Supreme Court.

Q. What is the SECNAV's policy toward annexation?

A. SECNAV Instruction 11011.29A of 1 Nov 1967 (see enclosure (2) to enclosure (1)) states that the Navy policy is not to oppose annexation and to cooperate in those instances where local statutes provide municipalities with the statutory authority to annex. The only caveat appears to be in those instances where SECNAV or Asst SECNAV (I&L) determine that such action would not be in the best interests of the Government. It is noted, however, that even if SECNAV opposed annexation and decided to fight it, the best that could probably be accomplished would be a two to three year delay caused by protracted, hostile litigation. The Supreme Court has said that a city has the power to annex federally owned areas upon which was located a Naval ordnance plant, even though such area was under exclusive federal jurisdiction, where the change of municipal boundaries would not interfere with the exercise of such jurisdiction (Howard v Commissioners of Louisville, 344 U.S. 624, 97 Law Ed 617 (1953)).

Q. Who possesses the authority to cooperate or object to annexation within the Naval establishment.

A. SECNAV Instruction 1101.29A INFRA, delegates such authority to the District Commandant, who in our case is the Commandant of the Fifth Naval District. It should be added, however, that notwithstanding the language of the SECNAVINST, experience has shown that the recommendation of the installation Commander is normally tantamount to a decision.

B. Ramifications of Annexation.

(1) In general

The United States Supreme Court has asserted that the respective powers of the federal government and of the state government within an annexed military reservation are not altered or changed by an annexation. The paramount significance of an annexation of a military reservation by a political subdivision, insofar as the matter of jurisdiction is concerned, is that the annexing political subdivision of the

DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
WASHINGTON, D.C. 20350

IN REPLY REFER TO
LFF-1-MMS:bab
8 JAN 1980

FOURTH ENDORSEMENT on CG MCAS Cherry Point ltr J:RPW:pjd
5200 of 8 Nov 1979

From: Commandant of the Marine Corps
To: Assistant Secretary of the Navy (Manpower, Reserve
Affairs and Logistics)

Subject: Proposed Annexation of Marine Corps Air Station,
Cherry Point, North Carolina to the City of
Havelock, North Carolina

1. Readdressed and forwarded.

2. Annexation of Marine Corps Air Station (MCAS), Cherry Point by the City of Havelock took place on 28 December 1979. Thus annexation has been imposed prior to review at the Departmental level. The need for such a review prior to annexation was expounded by the Commanding General, Cherry Point at a public hearing on 5 December 1979 at which time a 90 day extension was requested. At the 5 December hearing the City Commissioners did not grant the extension, but stated that they would consider any correspondence presented by the Secretary of the Navy or other interested parties prior to their vote on annexation. By telegram of 7 December 1979, the Secretary of the Navy requested a 90 day extension to allow sufficient time for assessment of the annexation proposal. On 10 December, the City Commissioners decided to proceed with a vote on the annexation proposal. The vote was scheduled for 13 December 1979. Prior to the 13 December meeting, the Commanding General, MCAS, Cherry Point forwarded a letter to the City Commissioners expressing concern as to the interrelationship of the services the City would be statutorily obligated to assume on the date of annexation and the current arrangements for those services. The letter also again requested a delay in annexation, if not for 90 days, then until 24 January 1980.

3. On 13 December the Commissioners approved a proposal that the annexation ordinance be read in open session and set 28 December 1979 as the date for a second reading. Upon the second reading, the annexation ordinance would be in effect. The second reading took place on 28 December 1979 and thus annexation was effected.

Annexation File

Advance copy
to J



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

24 JAN 1980

JHE

Copy Recd

FIFTH ENDORSEMENT on CG MCAS Cherry Point ltr J:RPW:pjd
5800 of 8 Nov 1979

From: Assistant Secretary of the Navy (Manpower, Reserve
Affairs and Logistics)

To: Commanding General, Marine Corps Air Station,
Cherry Point, North Carolina

Subj: Annexation of Marine Corps Air Station, Cherry Point,
North Carolina, to the City of Havelock, North Carolina

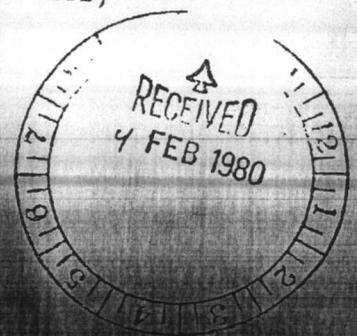
1. Your memorandum of 8 November 1979 presented an analysis of the factors that might bear on annexation of MCAS Cherry Point by the City of Havelock, North Carolina. Subsequently, notwithstanding requests for an extension of time and other expressions of concern, the City Commissioners approved the annexation proposal. Annexation took effect on 28 December 1979.

2. Subsequent endorsements on your 8 November, 1979 memorandum from the Atlantic Division, Naval Facilities Engineering Command; Commandant, Fifth Naval District; Commander, Naval Facilities Engineering Command and the Commandant of the Marine Corps all concluded that there is no significant adverse effect on the Department of the Navy and that the general policy, enunciated in SECNAVINST 11011.29A of 11 November 1967, not to oppose annexation should govern.

3. Based on the careful review of the facts presented, I can find no basis to oppose the annexation of MCAS Cherry Point by the City of Havelock.

J. A. BOYLE
Assistant Secretary of the Navy
(Manpower, Reserve Affairs & Logistics)

Copy to:
CMC
NAVFAC
COMFIVE
LANTDIVNAVFAC



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ALEXANDRIA, VA. 22332

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Commanding General
Marine Corps Air Station
Cherry Point, NC 28533

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J #1



DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
200 STOVALL STREET
ALEXANDRIA, VA 22332

IN REPLY REFER TO

31 DEC 1979

THIRD ENDORSEMENT on CG MCAS CHERRY POINT, NORTH CAROLINA ltr
J:RPW:pjd 5800 of 8 November 1979

From: Commander, Naval Facilities Engineering Command
To: Assistant Secretary of the Navy (Manpower, Reserve
Affairs and Logistics)
Via: Commandant of the Marine Corps
Subj: Proposed Annexation of Marine Corps Air Station,
Cherry Point, North Carolina, to the City of
Havelock, North Carolina

1. Readdressed and forwarded.
2. An objection to the proposed annexation could not be supported under the Department's annexation policy, as stated in reference (b).

SIGNED

A. W. COLLINS
Assistant Commander for Facilities
Planning and Real Estate

Copy to:
COMFIVE
CG MCAS Cherry Point NC
LANTNAVFACENGCOM