

Permit Class
MODIFICATION/MAJOR

(BY CRC VARIANCE)

Permit Number
47-87

STATE OF NORTH CAROLINA
Department of Environmental Quality
and
Coastal Resources Commission

Permit

for

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

Excavation and/or filling pursuant to NCGS 113-229

COPY

Issued to NC State Ports Authority, PO Box 9002, Wilmington, NC 28402

Authorizing development in New Hanover County at the Cape Fear River at State Ports Terminal,
1 Shipyard Blvd., Wilmington, as requested in the permittee's application dated 10/16/15, including the
attached workplan drawings (2), received DCM Wilmington on 11/25/15 (dredge footprint) & 11/17/15 (liquid bulk pier).

This permit, issued on January 13, 2016, is subject to compliance with the application (where consistent with the permit), all applicable regulations, special conditions and notes set forth below. Any violation of these terms may be subject to fines, imprisonment or civil action; or may cause the permit to be null and void.

Excavation

- 1) In order to protect juvenile shrimp and finfish populations, no future maintenance excavation shall take place between April 1st and September 30th of any year without prior approval of the Division of Coastal Management, in consultation with the appropriate resource agencies. This moratorium shall not apply to the initial 2016 dredging.
- 2) Excavation shall not exceed -44' mean lower low water (MLLW). In no case shall the depth of excavation exceed the depth of connecting waters.

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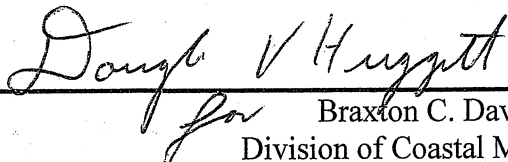
(See attached sheets for Additional Conditions)

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This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date.

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

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


for Braxton C. Davis, Director
Division of Coastal Management

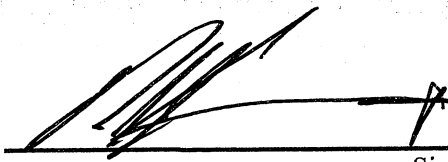
Any maintenance work or project modification not covered hereunder requires further Division approval.

All work must cease when the permit expires on

This permit and its conditions are hereby accepted.

December 31, 2019

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


Signature of Permittee

ADDITIONAL CONDITIONS

- 3) The temporary placement or double handling of fill materials within waters or vegetated wetlands is not authorized.
- 4) No excavation shall take place at any time outside of the area indicated on the attached workplan drawings.
- 5) The authorized project is located within a Primary Nursery Area (PNA). Therefore, in accordance with T15:07H.0208 of the Rules of the Coastal Resources Commission, no new dredging or excavation within the PNA shall be permitted, with this exception of that excavation which is specifically authorized by this Major Modification. Dredging in any manner outside of the approved alignment, including "kicking" with boat propellers, is not authorized. This prohibition shall be applied and enforced throughout the entire existence of the permitted development.

Spoil Disposal

- 6) All excavated materials shall be confined above normal high water and landward of regularly or irregularly flooded marsh behind adequate dikes or other retaining structures to prevent spillover of solids into any marsh or surrounding waters.

Sedimentation and Erosion Control

- 7) Appropriate sedimentation and erosion control devices, measures or structures shall be implemented to ensure that eroded materials do not enter adjacent wetlands, watercourses and property (e.g. silt fence, diversion swales, or berms, etc.).
- 8) All disturbed areas shall be properly graded and provided a ground cover sufficient to restrain erosion within thirty days of project completion.

Department of Natural and Cultural Resources

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- 9) The project site is located in an area having a possibility of containing cultural resources, such as shipwreck remains. If such materials are encountered, the permittee shall immediately stop work and notify the Division of Coastal Management and the Department of Natural and Cultural Resources-Underwater Archeology Branch.

Liquid Bulk Pier

- 10) This permit authorizes only the docks, piers, and other structures and uses located in or over the water that are expressly and specifically set forth in the permit application. No other structure, whether floating or stationary, shall become a permanent part of this facility without permit modification.
- 11) The liquid bulk pier and all associated structures shall have a minimum setback distance of 15 feet between any parts of the structure and the adjacent property owner's riparian access corridor.

ADDITIONAL CONDITIONS

- 12) The permittee shall maintain the authorized work in good condition and in conformance with the terms and conditions of this permit. The permittee is not relieved of this requirement if he abandons the permitted activity without having it transferred to a third party.

U.S. Army Corps of Engineers Conditions

NOTE: All U.S. Army Corps of Engineers (USACE) notifications and/or reporting requirements shall be submitted to Mr. Tyler Crumbley at: U.S. Army Corps of Engineers, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, NC 28403, by telephone at: (910) 251-4170, or by email at: tyler.crumbley@usace.army.mil. The permittee shall reference the following permit number, SAW-2015-02235, on all submittals.

- 13) Within 30 days following the completion of the construction phase, the permittee shall submit to the USACE and DCM two copies each of as-built plans that show the location of the reconfigured docking facility, including all the associated piles, for those portions that affect waters of the U.S.
- 14) Prior to the commencement of construction of the authorized dredging or other work within the right-of-way, or in proximity to a Federally maintained navigation channel, the permittee shall obtain all necessary Consents to cross Government Easement from the USACE Real Estate Division. The Real Estate Division may be contacted at: CESAS-RE-MC, 69 Darlington Avenue, Wilmington North Carolina 28403-1343, tel. 910-251-4474.
- 15) Activities proposed within the USACE Easement for Eagle Island may require additional approval prior to construction. Prior to commencing work associated with improvements or disposal in the USACE Eagle Island Designated Disposal Cell #1, the permittee shall coordinate with the USACE, Real Estate Division for any approvals needed to perform work within the USACE easement. The Real Estate Division may be contacted at: CESAS-RE-MC, 69 Darlington Avenue, Wilmington North Carolina 28403-1343, tel. 910-251-4474.
- 16) Dredging activities authorized by this permit shall not in any way interfere with the operations of the USACE civil works dredging and navigation projects.
- 17) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the discretion of the Secretary of the Army or his authorized representative, said structure or work shall be determined to cause unreasonable obstruction to the free navigation of the navigable waters, the permittee shall be required, upon no less than 14 days' notice from the USACE, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal, relocation, or alteration.

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ADDITIONAL CONDITIONS

- 18) To address concerns from the United States Coast Guard: The following information shall be provided a minimum of 10 days prior to dredge operations commencing:

Any dredging or other operational activity that impacts the safe navigation of Federal Waterways

- a. Dates (inclusive) of operation.
- b. Hours of operation (24 hours/daylight hours only).
- c. Names of involved vessel(s).
- d. Working and standby frequencies.
- e. Specific location (mile marker/channel).
- f. Any specific instructions or concerns that would be pertinent to the mariner.

Submit the information to:
USCG Sector NC Waterways Division
721 Medical Center Drive
Wilmington, NC 28401

or e-mail at NCmarineevents@uscg.mil

- 19) Should Federal Aids to Navigation need to be relocated to facilitate this operation, 30 days' notice is requested. The request shall be sent to the Coast Guard District Five Office at:

USCG District Five (DPW)
431 Crawford Street
Portsmouth, VA 23704

or e-mail at CGD5Waterways@uscg.mil

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- 20) The authorized structure and associated activity shall not interfere with the public's right to free navigation on all navigable waters of the United States. No attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the authorized work for reason other than safety.
- 21) The permittee shall install and maintain, at his expense, any signal lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, on authorized facilities. For further information, the permittee should contact the U.S. Coast Guard Marine Safety Office at (910) 772-2191.
- 22) The permittee shall advise the USACE in writing at least two weeks prior to beginning the work authorized by this permit and again upon completion of the work authorized by this permit.
- 23) The permittee, upon receipt of a notice of revocation of this permit or upon its expiration before completion of the work shall, without expense to the United States and in such time and manner as the Secretary of the Army or his authorized representative may direct, restore the water or wetland to its pre-project condition.

ADDITIONAL CONDITIONS

- 24) All necessary precautions and measures shall be implemented so that any activity shall not kill, injure, capture, pursue, harass, or otherwise harm any protected, Federally listed species (West Indian Manatee, Shortnose Sturgeon, and Atlantic Sturgeon). While accomplishing the authorized work, if the permittee discovers or observes a damaged or hurt listed endangered or threatened species, the District Engineer shall be immediately notified so that required coordination can be initiated with the U.S. Fish and Wildlife Service and/or National Marine Fisheries Service.
- 25) In order to further protect the endangered West Indian Manatee, *Trichechus manatus*, the applicant shall implement the U.S. Fish and Wildlife Service's Manatee Guidelines, and strictly adhere to all requirements therein. The guidelines can be found at http://www.fws.gov/nc-es/mammal/manatee_guidelines.pdf.
- 26) Within 120 days of the issuance of this permit, the permittee shall place 13.4 acres of land adjacent to the Brunswick River (PIN: 310720805657, Parcel ID: 048CB001 as designated on the attached map) into a conservation easement with a third party easement holder. The permittee shall maintain the preservation area in its natural condition, in perpetuity. Prohibited activities within the preservation area specifically include, but are not limited to: the construction or placement of roads, walkways, buildings, signs, or structures of any kind; filling, grading, excavation, leveling, or any activity that may alter the drainage patterns on the property; the cutting, mowing, destruction, removal, or damage of any vegetation; disposal or storage of any debris, trash, garbage, or other waste material. In addition, the permittee shall take no action, whether on or off the preservation property, which will adversely impact the wetlands and other waters on the preservation property.
- 27) In order to mitigate for impacts to primary nursery areas and essential fish habitat, the permittee has proposed, and NMFS has accepted, the proposal to obligate \$750,000 towards planning, permitting, and design of a fish passage structure at Lock and Dam No. 2 on the Cape Fear River. The specific State or local government agency that will accept and oversee the use of the contributed funds shall be identified and coordinated by the representative below:

National Marine Fisheries Service
Habitat Conservation Division
101 Pivers Island Road
Beaufort, North Carolina 28516-9722
(252) 838-0828

Upon the completion of the transfer of funds, and the submission of a letter of completion to the USACE, this condition will be satisfied. The proposed fish passage structure at Lock and Dam No. 2 is currently only a conceptual idea being developed by Cape Fear River Watch, Inc., and has not been reviewed or approved by the USACE or other necessary State and Federal agencies. The contribution of the above described funds and the satisfaction of this condition shall not influence the evaluation of any such proposed fish passage structure, and does not provide any guarantee or assurance that such fish passage structure will ever be approved or constructed.

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- 28) To address concerns regarding marsh sloughing into the newly dredged area, monitoring of the marsh vegetation edge for three years after construction is required. If the monitoring shows a loss of vegetated marsh, the permittee shall contact the USACE and the NMFS HCD to request a meeting to determine the need for additional compensatory mitigation. The permittee shall install monitoring plates at 100' intervals along the top of the containment berm which parallels the shoreline. The permittee shall survey the location of plates once per month for the first 3 months immediately after dredging, then once per quarter for 3 years. The most recent survey conducted by McKim & Creed in Nov 2015 shall constitute the baseline survey, and the permittee shall re-survey the edge of vegetation when a survey of the monitoring plates is conducted (e.g. on the same frequency). Aerial and on-site photography or other sources of visual monitoring may also be used to complement the survey data and determine any changes to the vegetated shoreline.

General

- 29) No vegetated wetlands shall be excavated or filled, even temporarily.
- 30) The permittee and/or his contractor shall meet on site with a representative of the Division prior to project initiation.
- 31) This Major Modification shall be attached to the original of Permit No. 47-87, which was issued on 2/17/87, as well as all subsequent modifications, renewals and refinements, and copies of all documents shall be readily available on site when a Division representative inspects the project for compliance.
- 32) All conditions and stipulations of the active permit remain in force under this Major Modification unless specifically altered herein.

NOTE: This permit does not eliminate the need to obtain any additional state, federal or local permits, approvals or authorizations that may be required.

NOTE: A major modification application processing fee of \$475 was received by DCM for this project.

NOTE: Future development of the permittee's property may require a modification of this permit. Contact a representative of the Division at (910)796-7215 prior to the commencement of any such activity for this determination.

NOTE: The U.S. Army Corps of Engineers assigned the proposed project SAW-2015-02235.

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