



NORTH CAROLINA
Environmental Quality

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Secretary

BRAXTON C. DAVIS
Director

March 19, 2019

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED
(7009 1410 0001 5954 0372)**

NC State Ports Authority
c/o Mr. Paul Cozza
PO Box 9002
Wilmington, NC 28402

Dear Mr. Cozza:

This letter is in response to your application for a Major Modification to Permit No. 47-87 under the Coastal Area Management Act (CAMA) and State Dredge and Fill Law, in which authorization was requested to expand the turning basin dredging limits and install a vertical submerged sheet pile toe wall along the eastern edge of the expanded basin adjacent to the Cape Fear River, at 1 Shipyard Boulevard, in New Hanover County. Processing of the application, which was received as complete by the Division of Coastal Management's Wilmington Office on October 29, 2018 is now complete. Based on the state's review, the Division of Coastal Management has made the following findings:

- 1) The subject property is located adjacent to the Cape Fear River. This section of the Cape Fear River has been designated by the North Carolina Marine Fisheries Commission as a Primary Nursery Area (PNA).
- 2) The proposed project is intended to allow a newly expanded class of freightliners to access the North Carolina State Port Facility.
- 3) The proposed project is a Major Modification to CAMA Major Permit No. 47-87. Permit No. 47-87 was originally issued on February 17, 1987 and has undergone several modifications and renewals. The original permit authorized hydraulic dredging of the NC State Ports Authority shipping berths. An expansion of the turning basin area, which involved new dredging of 6.4 acres of PNA, was authorized by way of a Coastal Resources Commission Variance, which was granted on December 8, 2015, resulting in the issuance of a Major Modification on January 13, 2016.
- 4) The application indicates that, based upon hydrographic surveys conducted in January 2017, the water depths in the location of the proposed dredge footprint expansion range from approximately +2' to -40' mean lower low water (MLLW).



- 5) The applicant currently has authorization to maintain the turning basin at approximately 1,400' in width and 1,500' in length, and to a final project depth of -44' MLLW. Adjacent waters maintained by the U.S. Army Corps of Engineers also have an authorized depth of -44' MLLW.
- 6) The applicant proposes to expand the dredge limits to allow for new excavation adjacent to the previously expanded boat basin. The total proposed boat basin dimensions are 1,524' in width by 1,500' in length, and to a final project depth of -45' (-42' + -2' + -1') MLLW.
- 7) The proposed expansion of the turning basin would result in additional new dredging of approximately 17.76 acres of PNA habitat.
- 8) Approximately 1.01 acres of Coastal Wetlands consisting primarily of Smooth Cordgrass (*Spartina alterniflora*) would be excavated as a result of the proposed project.
- 9) The N.C. Division of Marine Fisheries indicated that the proposed project would have significant adverse impacts to PNA habitat, protected species, fisheries and fisheries resources, and would also contribute to significant cumulative impacts to these resources over time.
- 10) As of the date of this letter, the NC Division of Water Resources is still reviewing the proposed project to determine if the project complies with State water quality standards.
- 11) Based upon the above referenced findings, the Division has determined that the proposed project is inconsistent with the following Rules of the Coastal Resources Commission:
 - a) 15A NCAC 07H.0203 states: "It is the objective of the Coastal Resources Commission to conserve and manage estuarine waters, coastal wetlands, public trust areas, and estuarine and public trust shorelines, as an interrelated groups of AECs, so as to safeguard and perpetuate their biological, social, economic, and aesthetic values and to ensure that development occurring within these AECs is compatible with the natural characteristics so as to minimize the likelihood of significant loss of private property and public resources..."
 - b) 15A NCAC 07H.0205(c) (Management Objectives for Coastal Wetlands), which states: "It is the objective of the Coastal Resources Commission to conserve and manage coastal wetlands so as to safeguard and perpetuate their biological, social, and economic and aesthetic values, and to coordinate and establish a management system capable of conserving and utilizing coastal wetlands as a natural resource necessary to the functioning of the entire estuarine system."
 - c) 15A NCAC 07H.0208(a)(2)(A), which states: "The location, design, and need for development, as well as the construction activities involved shall be consistent with the management objective of the Estuarine and Ocean System AEC (Rule .0203 of this subchapter) and shall be sited and designed to avoid significant adverse impacts upon the



productivity and biologic integrity of coastal wetlands, shellfish beds, submerged aquatic vegetation as defined by the Marine Fisheries Commission, and spawning and nursery areas.”

- d) 15A NCAC 07H.0208(b)(1), which states: “Navigation channels, canals, and boat basins shall be aligned or located so as to avoid primary nursery areas, shellfish beds, beds of submerged aquatic vegetation as defined by the MFC, or areas of coastal wetlands except as otherwise allowed within this Subchapter.”
- e) 15A NCAC 07H.0208(b)(1)(F), which states: “Any canal or boat basin shall be excavated no deeper than the depth of the connecting waters.”

Given the preceding findings, it is necessary that your request for issuance of a CAMA Major Permit under the Coastal Area Management Act and State Dredge and Fill Law be denied. This denial is made pursuant to N.C.G.S. 113A-120(a)(8) which requires denial for projects inconsistent with the state guidelines for Areas of Environmental Concern or local land use plans, and N.C.G.S. 113-229, which requires that a permit be denied for cases where a proposed development will lead to a significant adverse impact to fisheries resources.

If you wish to appeal this denial, you are entitled to a contested case hearing. The hearing will involve appearing before an Administrative Law Judge who listens to evidence and arguments of both parties before making a final decision on the appeal. Your request for a hearing must be in the form of a written petition, complying with the requirements of §150B of the General Statutes of North Carolina, and must be filed with the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, within twenty (20) days from the date of this denial letter. A copy of this petition should be filed with this office.

Another response to a permit denial available to you is to petition the Coastal Resources Commission for a variance to undertake a project that is prohibited by the Rules of the Coastal Resources Commission. Applying for a variance requires that you first acknowledge and recognize that the Division of Coastal Management applied the Rules of the Coastal Resources Commission properly in processing and issuing this denial. You may then request an exception to the Commission’s Rules based on hardships to you resulting from unusual conditions of the property. To apply for a variance, you must file a petition for a variance with the Division of Coastal Management Director and the State Attorney General’s Office on a standard form, which must be accompanied by additional information on the nature of the project and the reasons for requesting a variance. The variance request may be filed at any time, but must be filed a minimum of six weeks before a scheduled Commission meeting for the variance request to be eligible to be heard at that meeting. The standard variance forms may be obtained by contacting a member of my staff, or by visiting the Division’s web page at: <https://deq.nc.gov/about/divisions/coastal-management/coastal-management-permits/variances-appeals>.



NC State Ports Authority
March 19, 2019
Page 4 of 4

Members of my staff are available to assist you should you desire to modify your proposal in the future. If you have any questions concerning this matter, please contact Ms. Courtney Spears at (910) 796-7426.

Sincerely,



Braxton C. Davis

cc: U.S. Army Corps of Engineers, Wilmington, NC
OCRM/NOAA, Silver Spring, MD

