

Permit Class
NEW

Permit Number
45-10

STATE OF NORTH CAROLINA
Department of Environment and Natural Resources
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

Issued to **Town of Nags Head, PO Box 99, Nags Head, NC 27959**

Authorizing development in Dare County at Atlantic Ocean and Ocean Beach within Town limits. as requested in the permittee's application dated 8/18/09, including the attached drawings (26), 17 dated Apr. 2009 & 9 dated revised Oct. 2009, & attached AEC Hazard Notice dated 4/28/09

This permit, issued on April 29, 2010, 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) Unless specifically altered herein, all excavation activities shall take place entirely within the areas indicated on attached figures No. 02 (Overall Project Plan) and No. S1 (Survey Track and Tie Lines) and in accordance with the attached narrative dated 1/5/09.

(See attached sheets for Additional Conditions)

This permit action may be appealed by the permittee or other qualified persons within twenty (20) days of the issuing date. An appeal requires resolution prior to work initiation or continuance as the case may be.

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

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

All work must cease when the permit expires on

September 3, 2014

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

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

James H. Gregson, Director
Division of Coastal Management

This permit and its conditions are hereby accepted.

Signature of Permittee

ADDITIONAL CONDITIONS

Cultural Resource Protection

- 2) In order to satisfy concerns with the North Carolina Department of Cultural Resources, and to protect the two magnetic anomaly clusters identified in the report prepared by Tidewater Atlantic Research entitled "A Phase I Remote Sensing Archaeological Survey of the Three Proposed Borrow Sites East of Bodie Island, Dare County, North Carolina", there shall be a 400 foot diameter buffer zone around each of the two anomalies. No excavation activities shall take place with these buffer areas without permit modification.

Beach Nourishment

- 3) This permit authorizes beach nourishment activities to be carried out one (1) time along the entire reach of the requested project area. Any request to carry out additional activities within an area where nourishment activities have been completed under this permit shall require a modification of this permit.
- 4) Prior to initiation of beach nourishment activity along each section of beach, the existing mean high water line shall be surveyed, and a copy of the survey provided to the Division of Coastal Management.

NOTE: The permittee is advised that the State of North Carolina claims title to all currently submerged lands and any future lands that are raised above the Mean High Water level as a result of this project.

- 5) Prior to the initiation of any beach nourishment activity above the normal high water contour (NHW) within the limits of the permittee's jurisdiction, easements or similar legal instruments shall be obtained from all impacted property owner's.
- 6) Prior to the initiation of any beach nourishment activity, the permittee shall coordinate with the Division of Coastal Management to determine the static vegetation line that shall be used as the reference point for measuring future oceanfront setbacks. The static vegetation line, which is defined as the vegetation line that existed within one year prior to the onset of initial project construction, shall be established using on-ground observation and survey or aerial imagery. This static vegetation line shall then be marked and a survey depicting this static vegetation line shall be submitted to the Division of Coastal Management prior to any beach nourishment activities.
- 7) The seaward nourishment limit shall be conducted in accordance with the attached work plats labeled "Project Plan" figures 3 -17 all dated April 2009.
- 8) Temporary dikes shall be used to retain and direct flow of material parallel to the shoreline to minimize surf zone turbidities. The temporary dikes shall be removed and the beach graded in accordance with approved profiles upon completion of pumping activities in that particular section of beach.
- 9) Should dredging operations encounter sand deemed non-compatible with 15A NCAC 07H .0312 (Technical Standards for Beach Fill Projects), the dredge operator shall immediately cease operation and contact the NCDCM. Dredge operations shall resume after resolution of the issue of sand compatibility.
- 10) In order to prevent leakage, dredge pipes shall be routinely inspected. If leakage is found and repairs cannot be made immediately, pumping of material shall stop until such leaks are fixed.

ADDITIONAL CONDITIONS

- 11) Once a section is complete, piping and heavy equipment shall be removed or shifted to a new section and the area graded and dressed to final approved slopes.
- 12) Land-based equipment necessary for beach nourishment work shall be brought to the site through existing accesses. Should the work result in any damage to existing accesses, the accesses shall be restored to pre-project conditions immediately upon project completion in that specific area

NOTE: The permittee is advised that any new access site would require a modification of this permit.

- 13) Where oceanfront development exists at elevations nearly equal to that of the native beach, a low protective dune shall be pushed up along the backbeach to prevent slurry from draining towards the development.
- 14) Dune disturbance shall be kept to a minimum. Any alteration of existing dunes shall be coordinated with the Division of Coastal Management as well as the appropriate property owner(s). All disturbed areas shall be restored to original contours and configuration with reference to the surveyed normal high water line and shall be revegetated immediately following project completion in that specific area.

Mitigation and Monitoring

- 15) The permittee shall fully implement the benthic monitoring plan as described in the attached "Draft Proposed Benthic Monitoring Plan" dated April 2010, including the following modifications to the approved plan;
 - a) Samples stations within the swash and subtidal zones shall be defined with standardized (fixed) stations that can be accurately relocated for all subsequent sampling events:
 - b) The northern control station shall be located in an area that will not be potentially renourished by future nourishment projects (ie. USACE or Town of Kill Devil Hills):
 - c) The control stations shall be located +/- 4 miles north and +/- 4 miles south of the authorized impact area, as opposed to the +/- 2 mile separations currently proposed:
 - d) Prior to the initiation of implementation of the benthic monitoring plan, the permittee shall provide to the Division for approval a more specific plan on what organisms are proposed to be identified, as well as what mesh size the applicant proposes to use to collect these organisms.

ADDITIONAL CONDITIONS

- 16) In order to ensure protection of sea turtles, the permittee shall implement the following survey activities throughout the entire project area from May 1st through November 15th for the duration of the authorized project;
- a) In each case of observation of sea turtles (nesting females, hatchlings or eggs), designated local personnel shall immediately be notified:
 - b) If a sea turtle is observed in the project area during the project, all work shall immediately be stopped within 500 ft. of the turtle. If the turtle successfully places a clutch of eggs on the beach, work in the area shall not resume until the eggs can be relocated to a safe area. If the turtle returns to the water without nesting, work may resume in the affected area:
 - c) If recently emerged hatchlings from an unmarked nest are observed, all work shall immediately stop within 100 feet of the hatchlings, and all artificial lighting shall be extinguished within 500 feet of the hatchling to facilitate seafinding behavior of the hatchlings. Work shall not resume within 100 feet of the emerged nest until authorized sea turtle volunteers can excavate the nest and release any remaining hatchlings into the ocean:
 - d) Nests located in areas where beach nourishment material is to be placed prior to nest hatching shall be relocated to typical nesting habitat on the beach outside of the project area. Nesting surveys and egg relocations shall be conducted only by Wildlife Resources Commission permitted personnel with prior experience and training. Only nests that will be affected by construction activities may be moved:
 - e) If any nests or eggs are discovered during the project, all project activity shall immediately cease within 50 feet of the location of the eggs or nest. Work in the affected area shall only resume after receiving permission from Wildlife Resources Commission staff:
 - f) During beach nourishment activities, daily monitoring shall be conducted to determine if escarpments have formed. Any escarpments greater than 18 inches that are present between May 1st and August 30 shall be leveled. Monitoring outside the sea turtle nesting season shall be done at least once every two weeks. Leveling activities shall be coordinated with the Wildlife resources Commission prior to implementation. The permittee shall implement the escarpment monitoring and associated leveling for three years post construction:
 - g) During the sea turtle season (May 1 through November 15), efforts shall be made to minimize impacts to sea turtle access to the beach to the maximum extent possible by storing equipment and materials off of the beach, perpendicular to the beach, or at the landward most area of the beach that does not compromise dune integrity:
 - h) During the sea turtle season (May 1 through November 15), nighttime lighting associated with nourishment activities shall be minimized. Lighting shall be limited to the immediate construction area and shall be minimized through reduction, shielding, lowering, and appropriate placement to avoid excess illumination of the water surface and nesting beach.

ADDITIONAL CONDITIONS

- 17) Unless specifically modified herein, all mitigative commitments and/or biological monitoring commitments made during the environmental review process as found in the final Environmental Impact Statement shall be adhered to.

General

- 18) This permit does not authorize the extension of any of the existing ocean outfalls that fall within the project boundaries.
- 19) This permit shall not be assigned, transferred, sold or otherwise disposed of to a third party without the written approval of the Division of Coastal Management.
- 20) The permittee and his contractor shall schedule a pre-construction conference with the Division of Coastal Management and the Wildlife Resources Commission prior to the initiation of any dredging or mobilization activities.
- 21) The permittee shall obtain any necessary authorizations or approvals from the US Army Corps of Engineers prior to initiation of any permitted activity. All conditions of the Federal approval shall be adhered to.
- 22) The permittee and/or his contractor shall provide for proper storage and handling of all oils, chemicals hydraulic fluids, etc., necessary to carry out the project.
- 23) The N.C. Division of Water Quality has authorized the proposed project under General Water Quality Certification No. 3642 (DWQ Project No. 06-1275 V2), which was issued on 4/28/10. Any violation of the Water Quality Certification shall also be considered a violation of this CAMA Permit.
- 24) No sand shall be placed on any sand bags that have been determined by the Division of Coastal Management to be subject to removal under 15A NCAC .0308(a)(2). In order to ensure compliance with this condition, the Division of Coastal Management shall be contacted at (252) 264-3901 prior to project initiation so that Division staff may meet on site with the permittee and/or contractor.
- 25) This permit does not authorize any permanent or long-term interference with the public's right of access and/or usage of all State lands and waters.
- 26) The permittee shall make every effort possible to minimize any negative impacts of trucks and construction equipment on roadway and pedestrian traffic. The permittee should also ensure that the ability of individuals to access and enjoy the beach is not impeded outside of the construction limits.

NOTE: The permittee is advised that the Division of Coastal Management shall regulate the removal of existing sandbags and the placement of new sandbags in accordance with 15A NCAC 07H .0308 (a)(2)(F), or in accordance with any variances granted by the N.C. Coastal Resources Commission.

ADDITIONAL CONDITIONS

- 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:** Future nourishment activities may require a modification of this permit. The permittee shall contact a representative of the Division at (252) 264-3901 prior to the commencement of any such activity for the determination.
- NOTE:** The permittee is encouraged to make its contractors aware of existing utilities during ingress and egress of the site to avoid damage to the utilities. Please contact the Dare County Water Department to confirm the location of utilities in the area.