



US Army Corps
Of Engineers
Wilmington District

PUBLIC NOTICE

Issue Date: August 13, 2013
Comment Deadline: September 12, 2013
Corps Action ID Number: SAW-2005-00344
(ORM #2004-00344)

The Wilmington District, Corps of Engineers (Corps) received a request from the Town of North Topsail Beach seeking a permit modification to their current Department of the Army (DA) authorization issued on May 27, 2011 to relocate the New River Inlet ebb tide channel and to conduct beach nourishment along 11.1 miles of North Topsail Beach oceanfront shoreline in Onslow County, North Carolina. The modification request consists of changing Phase V's original permitted construction schedule and beach fill footprint.

Specific plans and location information are described below and shown on the attached plans. This Public Notice and all attached plans are also available on the Wilmington District Web Site at <http://www.saw.usace.army.mil/Missions/RegulatoryPermitProgram.aspx>. Also, please reference the December 2009 Final Environmental Impact Statement (EIS) and the April 13, 2011 Record of Decision (ROD) for the May 27, 2011 DA authorization.

Applicant: Mr. Stuart Turille, Town Manager
Town of North Topsail Beach
2008 Loggerhead Court
North Topsail Beach, North Carolina 28460

Agent (if applicable): Coastal Planning & Engineering of North Carolina, Inc.
C/o: Mr. Brad Rosov
CB&I
4038 Masonboro Loop Road
Wilmington, North Carolina 28409

Authority

The Corps evaluates this application and decides whether to issue, conditionally issue, or deny the proposed work pursuant to applicable procedures of the following Statutory Authorities:

Section 404 of the Clean Water Act (33 U.S.C. 1344)

Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972
(33 U.S.C. 1413)

Location

The Phase V project site, 34°29'12.59" N & 77°25'48.52"W, extends from North Topsail Beach/Surf City limits to approximately 1.75 miles southwest of NC Hwy 210 high rise bridge and encompasses approximately 3.85 miles of North Topsail Beach oceanfront shoreline; and also includes an offshore borrow source located approximately 0.5 mile directly offshore from the high rise bridge in Onslow County, North Carolina.

Existing Site Conditions

Phase I of the original permit was implemented during the 2012/2013 dredging window and all work was completed by February 2013. This phase included the relocation of the New River ebb tide channel with the use of a cutter head dredge and the placement of an estimated 566,244 cubic yards of dredged material along approximately 7,500 linear feet of the north-northeast ocean shoreline on North Topsail Beach.

The Phase V beach fill placement is approximately 3.85 mile stretch (of the original 11.1 miles) along the southwest ocean shoreline of North Topsail Beach. Unlike most of the other phases, this section, originally known as the southern section, is located outside of the Coastal Barrier Resource System (CBRS), which prohibits the expenditure of Federal funds pursuant to the Coastal Barrier Resource Act of 1982 (CBRA-82) and the Coastal Barrier Improvement Act of 1990 (CBIA-90). Being outside of the CBRS and eligible to receive Federal funds, this southern section of North Topsail Beach remains included in the U.S. Army Corps of Engineers study area for the development of Topsail Island long-term Federal shoreline protection plan.

Applicant's Stated Purpose

One of the main purposes for the Town's original construction timeframe was due to financial limitations and scheduling. The applicant's stated purpose for the project modification is to expedite the construction schedule and funding process due to the positive results in implementing Phase I. With the potential of new funding avenues, it is the Town's desire to push for a consecutive beach placement event this upcoming dredging season. Additionally, the Town's purpose to increase the footprint for Phase V, which is a similar density rate as the other phases, is due to the shortfalls of the Federal Project.

Project Description

Project plans consist of increasing the beach fill volume to 1.5 million cubic yards (over twice the amount of the original volume of 512,400 cy) with a range fill density of 50-92 cubic yards per linear foot, averaging 75 cubic yards per linear foot. This proposed linear footage is similar to that of the other phases. By implementing Phase V in 2013/2014 dredging window, the schedule for this phase will deviate from its original estimated timeframe of (7) years following the initial construction of Phase I. All other original plans for Phase V, as stipulated in the FEIS, ROD, and May 27, 2011 DA authorization, remain unchanged. This includes the use of the offshore borrow area, utilization of a cutter head dredge, and the implementation of all mitigation, minimization, and avoidance measures outlined in Section 6.0 of the FEIS and in the Special Conditions of the DA authorization.

Avoidance and Minimization

The applicant provided the following information in support of efforts to avoid and/or minimize impacts to the aquatic environment: All mitigation, minimization, and avoidance measures outlined in Section 6.0 of the December 2009 FEIS and the May 27, 2011 DA authorization remain valid.

Compensatory Mitigation

The applicant offered the following compensatory mitigation plan to offset unavoidable functional loss to the aquatic environment: All mitigation, minimization, and avoidance measures outlined in Section 6.0 of the December 2009 FEIS and the May 27, 2011 DA authorization remain valid.

Essential Fish Habitat

Pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, this Public Notice initiates the Essential Fish Habitat (EFH) consultation requirements. The Corps' initial determination is that the proposed project may affect, but not likely to adversely affect EFH or associated fisheries managed by the South Atlantic or Mid Atlantic Fishery Management Councils or the National Marine Fisheries Service (NMFS).

No additional effects to fisheries are expected to be incurred with the implementation of the permit modification outside of what has been previously documented in the original permit. All potential direct and indirect impacts to EFH and other fishery resources associated with the proposed modification activities can be referenced in the original September 2009 EFH Assessment. NOTE: Through coordination with NMFS on August

5, 2013, an amendment to the 2009 assessment will not be prepared for the permit modification.

Cultural Resources

Pursuant to Section 106 of the National Historic Preservation Act of 1966, Appendix C of 33 CFR Part 325, and the 2005 Revised Interim Guidance for Implementing Appendix C, the District Engineer consulted district files and records and the latest published version of the National Register of Historic Places and initially determines that:

- ☒ No historic properties, nor properties eligible for inclusion in the National Register, are present within the Corps' permit modification area (offshore borrow area and Phase V placement footprint); therefore, there will be no historic properties affected. The Corps subsequently requests concurrence from the SHPO.

NOTE: As a result of the January 21, 2008 cultural resource survey during the original permit review, no historic properties, nor properties eligible for inclusion in the National Register, were present within the offshore borrow area or the Phase V placement area. By letter dated March 12, 2008, SHPO concurred with the findings in that original survey. Special Condition No. 13 of the May 27, 2011 permit remains valid and states, "If submerged cultural resources are encountered during the operation, the USACE will be immediately notified so that coordination can be initiated with the Underwater Archeology Unit (UAU) of the Department of Cultural Resources. In emergency situations, the permittee should immediately contact the UAU at (910-458-9042), Fort Fisher, so that a full assessment of the artifacts can be made."

The District Engineer's final eligibility and effect determination will be based upon coordination with the SHPO and/or THPO, as appropriate and required, and with full consideration given to the proposed undertaking's potential direct and indirect effects on historic properties within the Corps-identified permit area.

Endangered Species

Pursuant to the Endangered Species Act (ESA) of 1973, under purview of U.S. Fish and Wildlife Service (USFWS) and the NMFS Protective Resources Division, the Corps reviewed the project area, examined all information provided by the applicant, consulted the latest North Carolina Natural Heritage Database, and reevaluated the November 2009 Biological Assessment (BA) for the original permit. The project area for the modification request is included in the November 2009 BA overall project area and was part of the evaluation during our original ESA review and consultation. However, since the previous consultation, the Corps has become aware of USFWS and NMFS's recent and separate proposals to list Critical Habitats for the loggerhead sea turtle (*Caretta*

caretta) subject to each agencies purview. The proposed Critical Habitat designation listings, which include onshore nesting habitat for USFWS, *Sargassum* habitat for NMFS, and Neritic habitat for NMFS, include North Topsail Beach. Based on this new available information:

- The Corps determines that the proposed project modification may affect, not likely to adversely affect federally listed endangered or threatened species or their formally or proposed designated critical habitat. A Supplemental BA to the November 2009 BA has been prepared and will be provided to USFWS and NMFS. The Corps reinitiates consultation under Section 7 of the ESA with each agency and will not make a permit decision until the consultation process is complete. NOTE: In our previous consultation associated with the original permit request, which included using the offshore borrow area with a cutter head dredge and the placement of fill along Phase V limits, both the USFWS and NMFS concluded that the activity is not likely to adversely affect any of the listed species under their purview. All Special Conditions of the May 11, 2011 DA authorization associated with threatened and endangered species remain valid.

Other Required Authorizations

The Corps forwards this notice and all applicable application materials to the appropriate State agencies for review.

North Carolina Division of Water Quality (NCDWQ): The Corps will generally not make a final permit decision until the NCDWQ issues, denies, or waives State Certification required by Section 401 of the Clean Water Act (PL 92-500). The receipt of the application and this public notice combined with appropriate application fee at the North Carolina Division of Water Quality Central Office in Raleigh constitutes initial receipt of an application for a 401 Water Quality Certification. A waiver will be deemed to occur if the NCDWQ fails to act on this request for certification within sixty days of the date of the receipt of this notice in the NCDWQ Central Office. Additional information regarding the Clean Water Act Certification may be reviewed at the NCDWQ Central Office, Wetlands, Buffers, Stormwater Compliance and Permitting Unit, 512 North Salisbury Street, Raleigh, North Carolina 27604-2260. All persons desiring to make comments regarding the application for certification under Section 401 of the Clean Water Act should do so, in writing, by September 12, 2013 to:

NCDWQ Central Office
Attention: Ms. Karen Higgins
(USPS mailing address): 1650 Mail Service Center, Raleigh, NC 27699-1650

Or,

(physical address): 512 North Salisbury Street, Raleigh, North Carolina 27604

North Carolina Division of Coastal Management (NCDCM): The application did not include a certification that the proposed work complies with and would be conducted in a manner that is consistent with the approved North Carolina Coastal Zone Management Program. Pursuant to 33 CFR 325.2 (b)(2) the Corps cannot issue a Department of Army (DA) permit for the proposed work until the applicant submits such a certification to the Corps and the NCDCM, and the NCDCM notifies the Corps that it concurs with the applicant's consistency certification. As the application did not include the consistency certification, the Corps will request, upon receipt,, concurrence or objection from the NCDCM.

Evaluation

The decision whether to issue a permit will be based on an evaluation of the probable impacts including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values (in accordance with Executive Order 11988), land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and, in general, the needs and welfare of the people. For activities involving the discharge of dredged or fill materials in waters of the United States, the evaluation of the impact of the activity on the public interest will include application of the Environmental Protection Agency's 404(b)(1) guidelines.

Commenting Information

The Corps of Engineers is soliciting comments from the public; Federal, State and local agencies and officials, including any consolidated State Viewpoint or written position of the Governor; Indian Tribes and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment (EA) and/or an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act (NEPA). Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

Any person may request, in writing, within the comment period specified in this notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing. Requests for a public hearing shall be granted, unless the District Engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing.

The Corps of Engineers, Wilmington District will receive written comments pertinent to the proposed work, as outlined above, until 5pm, September 12, 2013. Comments should be submitted to Mr. Mickey Sugg, Wilmington Regulatory Field Office, 69 Darlington Avenue, Wilmington, North Carolina 28403 , at (910) 251-4811, or by e-mail at mickey.t.sugg@usace.army.mil.