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ENVIRONMENTAL CONTROL**
DIVISION OF WATER
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Technical Response Memorandum

To: Theresa Newman, Hearing Officer

Through: Steven M. Smailer, Director, Division of Water 
Matthew R. Jones, Section Manager, Wetlands and Waterways Section *Matthew Jones*

From: Julie R. Molina, Environmental Scientist, Wetlands and Waterways Section *JRM*

Date: June 25, 2024

Subject: Andrew M. Bolduc and Maureen A. Bolduc, Subaqueous Lands Permit Application

INTRODUCTION

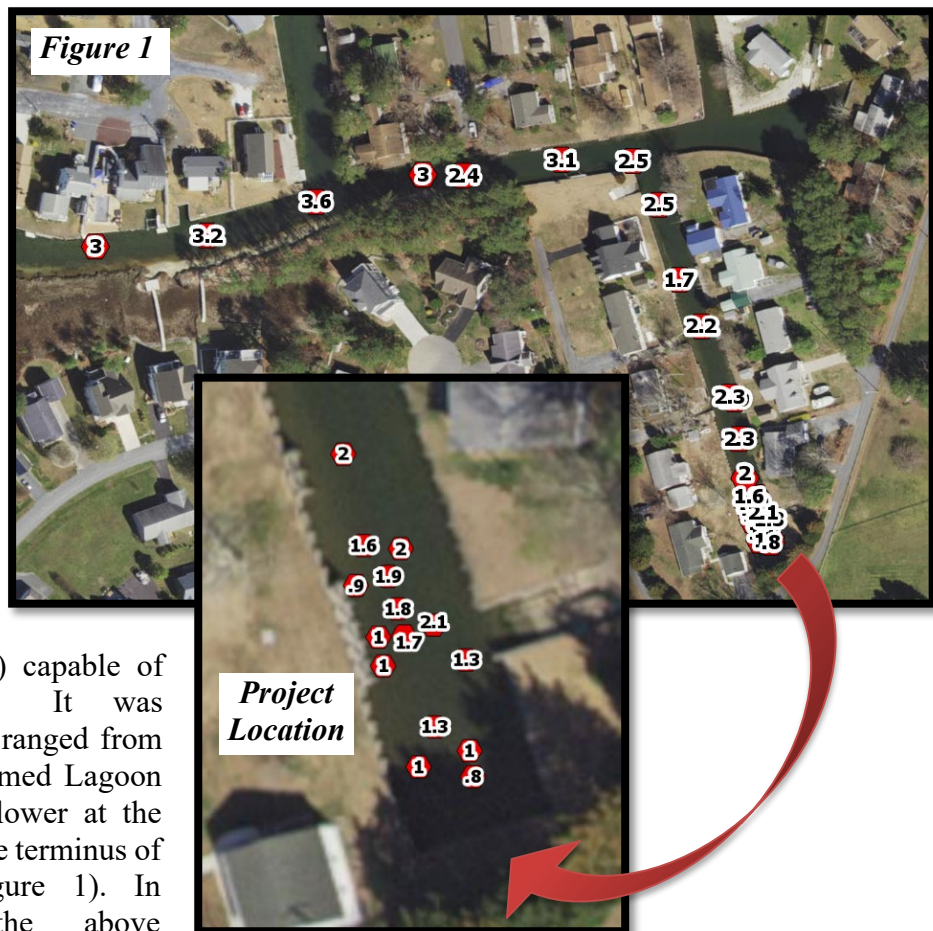
On March 5, 2018, the Wetlands and Waterways Section (WWS), Division of Water, Department of Natural Resources and Environmental Control received an application from Coastal and Estuarine Research, Inc. submitted on behalf of Andrew M. Bolduc and Maureen A. Bolduc to conduct maintenance dredging, located in an Unnamed Lagoon east of White Creek at 32408 Holly Terrace Road, Ocean View, Sussex County, Delaware (Tax Parcel no. 1-34-9.00-186.00). The proposed project is subject to the requirements of the Subaqueous Lands Act (7 Del.C. Ch. 72) and the 7 DE Admin. Code 7504 Regulations Governing the Use of Subaqueous Lands.

The project was advertised for a 20-day public notice period from April 4, 2018 to April 24, 2018. Upon conclusion of the public notice period, the WWS received one written comment in opposition to the project. The commenter, who is located directly adjacent to the project, expressed concern over the location of the property line, concern over the potential damage to the access road by the construction equipment, and the potential for his bulkhead to collapse during the dredging activity. Furthermore, the commenter agreed that the canal did need to be dredged. However, he sought to have his concerns addressed by attaining a bulkhead insurance bond in case of collapse before permit issuance.

Since one comment was received in objection, the project scientist informed the Bolducs that the permitting process allowed for three options going forward. 1) The Bolducs come to an agreement with the commenter, and he rescinds his opposition; 2) the Wetlands and Waterways Section moves forward with the public hearing process; or 3) the Bolducs withdraw their application. The Bolducs were interested in resolving matters themselves with the commenter, so a negotiation period commenced between both parties.

During the interim, the project scientist conducted the regulatory review of the project. When evaluating dredging projects, the WWS references Section 4.11.4 and Section 4.11.4.3 of 7 DE Admin. Code 7504 Regulations Governing the Use of Subaqueous Lands which states, in relevant part; "Prohibited Dredging Project. The following types of dredging projects are prohibited...Dredging channels, lagoons, or canals deeper than the existing controlling depth of the connecting or controlling waterway." White Creek is the connecting waterbody to the Unnamed Lagoon where the project is taking place. The project originally proposed to maintenance dredge to 4 feet below mean low water. While White Creek has a controlling water depth of 4 feet below mean low water, the depth of the Unnamed Lagoon was observed to be much shallower. The WWS obtained further information by conducting a field reconnaissance to verify if the proposed maintenance dredging of 4 foot below mean low water was consistent with the controlling water

depth of the Unnamed Lagoon. WWS staff traveled to the proposed dredging site during a typical low tide via boat and navigated the vessel along the extent of the lagoon. Measurements were taken of the water depths by utilizing a survey level rod along the Lagoon and at the proposed dredge site. These locations and depths were captured by operating a Global Positioning Unit (GPS) capable of submeter accuracy. It was determined that depths ranged from 3 feet within the Unnamed Lagoon and became even shallower at the project site located at the terminus of the Lagoon (see Figure 1). In accordance with the above referenced regulation and based on the observed depths of the



controlling waterway, the proposed depth to maintenance dredge was required to be minimized to 3 feet below mean low water.

Additionally, the project scientist reviewed the permitting history of the site. Statewide Activity Approval no. SA-199/09 authorized a 4-foot wide by 25 foot long dock but on-site there was a 4 foot wide by 26 foot long dock with an additional 5 foot long steps. In accordance with 7 Del.C. Chapter 72 §7205, the Secretary may issue an after-the-fact authorization provided the activity is consistent with the purposes and provisions of the Subaqueous Lands Act. The applicant elected to include a request to authorize the dock extension through the after-the-fact approval process to bring the docking facility into compliance. The existing dock extension has minimal impacts on the public and navigation since it abuts directly to and is parallel with the bulkhead. In addition, removing the existing dock extension now would disturb the environment.

As part of the regulatory review process, the project scientist coordinated within the Department to address potential concerns. The DNREC, Division of Fish and Wildlife, Species Conservation and Research Program conducted a review for species that would be impacted by the project. No species of concern were documented for the dredge location, but recommendations were made to protect eastern tiger salamander, a State-endangered species, located at the disposal site. A time of year restriction on construction activities and additional requirements are included in the draft Subaqueous Lands Permit. Additional Department coordination occurred with the DNREC, Division of Water, Groundwater Protection Branch. Their assessment included an evaluation of the potential for the dredged material to impact groundwater in the surrounding area of the disposal site. This was a concern since this disposal site had received spoils from multiple projects over the past 5 years. The Groundwater Protection Branch measured the conductivity, pH, and dissolved oxygen in two locations of the burrow pit pond situated at the disposal site. Based on the measurements, the Groundwater Protection Branch determined that groundwater contamination was not a concern.

During this time, other application updates were made to clarify the record and attempt to come to a resolution with the commenter. The applicant provided an updated property survey which detailed that the Bolducs own up to their bulkhead rather than the lagoon centerline. In addition, the location of the area to be dredged was modified from the lagoon centerline to 10 feet away from the commenter's adjacent property lines located to the east and south of the proposed dredging activity. The northern limit of the project was defined as the shared property line of a separate adjacent landowner who submitted a letter of no objection. Although efforts were made, the Bolducs were unable to come to a resolution with the commenter, so a public hearing was scheduled. The announcement for a public hearing was placed on a 20-day public notice period starting on March 18, 2020.

At the time of the public hearing, the applicant, Andrew M. Bolduc and Maureen A. Bolduc proposed to authorize a 4 foot wide by 1 foot long dock extension with a connecting 4 foot wide by 5 foot long set of access steps and to mechanically maintenance dredge 153± cubic yards to a depth of 3 feet below mean low water in an unnamed lagoon adjacent to White Creek, located at 32408 Holly Terrace Road, Ocean View and to transport the dredged material via water-tight dump trucks approximately 5 miles to a previously approved confined disposal area located northeast of

the intersection of Irons Lane and Old Mill Road at Tax Parcel# 134-7.00-187.00, Dagsboro, Sussex County, Delaware.

The public hearing was held on April 15, 2020. The public hearing was attended by WWS staff, the applicant's representatives, and individuals from the public. During the Public Hearing, the Hearing Officer, Theresa Newman, gave the introductory remarks on behalf of the Department. Subsequently, the project scientist, Julie R. Molina, gave a presentation on behalf of the Wetlands and Waterways Section. The Department's Wetlands and Waterways Section presentation has been enclosed for reference. Mrs. Molina described the overview of the application as submitted for the project. To conclude, Mrs. Molina presented the exhibits of the public records on behalf of the Department.

Subsequently, the applicant's consultant from Coastal and Estuarine Research, Inc., Evelyn Maurmeyer, gave a presentation. Ms. Maurmeyer clarified the reasoning for the extent of the dredging being modified from the centerline of the lagoon to 10 feet away from the commenter's property line. The project initially proposed to dredge to the centerline of the lagoon to stay within the applicant's property boundaries and directly abutting the southern shared property line. However, since the commenter pointed out that he did not believe waterfront property owners owned to the centerline of the lagoon, a new property survey was submitted which detailed that the Bolducs own up to their bulkhead rather than the lagoon centerline. The project dredging area was then modified to be 10 feet from both the east and south-facing property lines which are shared with the commenter. Furthermore, she countered concerns that the dredging would collapse the commenter's bulkhead by citing Mr. Bolduc, who has OSHA training. Mr. Bolduc determined that the mud in the lagoon is a class C-80 material with no structural ability. Therefore, it would be unlikely that the mud is holding up the bulkhead, and its removal would not cause the bulkhead to collapse especially since dredge cuts are proposed to be sited 10 feet from the property line. At the time, Mr. Bolduc also offered to pay half the cost to install pilings to stabilize the commenter's bulkhead. However, after believing they had reached a resolution, the commenter maintained his disapproval of the project. Ms. Maurmeyer also addressed the third area of concern that the dump trucks hauling away the dredged material would cause damage to the roadway. She noted that the contractor, Droney Marine Construction, is licensed, bonded, and insured and any damage to the roadway would be repaired. She further pointed out that this contractor routinely drives dump trucks on similar roadways and has never had an issue with roadway damage. Ms. Maurmeyer concluded that the project is necessary based on the water depths confirmed by the Department which showed that the project site is not navigable at low tide. She further explained that as a waterfront property owner, the Bolducs have rights to have ingress and egress to their docking facility.

At that time, Ms. Newman opened the forum for public comment. Mr. Bolduc was the only other person who commented. He stated that Ms. Maurmeyer covered the subject matter thoroughly and he was in agreement with her comments. Ms. Newman concluded the hearing but allowed the record to remain open through April 30, 2020 for final comments to be received.

After the Public Hearing, three comments were submitted to the Department. Two of those comments were in full support of the project. The commenters reiterated that the applicant did everything they could to address concerns and meet regulatory requirements. Additionally, they

pointed out that the canal has extremely low water depths which is hazardous and by allowing the dredging to take place, the lagoon could be safely navigated. The third comment was from the commenter who originally objected to the project. He withdrew his objection by stating the following: “I am in full agreement for the proposed dredging project that Mr. and Mrs. Bolduc are applying for this permit, under the following conditions: 1. That according to Droney Marine, as long as the dredging is limited to 10 ft distance from both my bulkheads, no pilings will be needed to support the bulkheads (phone conversation). 2. I've attached an email, that I would like entered into the record on why I withdrew my support of this project last November 13, 2019. It was due to Mr. Bolduc intentionally mowing and blowing grass and leaves directly into the canal, as if he had a motive. That motive, I believe was to make the canal bottom appear so bad, since a depth survey was to be conducted by DNREC for this permit, is the only reason I now can understand. The email to Evelyn Maurmeyer, Julie Molina, and others, clearly stated WHY I was withdrawing my previous approval of this dredge project; whereas, during the live hearing on April 15, 2020, Evelyn Maurmeyer, stated that my withdrawal was made but NO REASON WAS GIVEN. That was an incorrect statement. The reason for my withdrawal as stated above and in the email attached, was because of the intentional "dumping" of leaves and grass into the canal. People who do this, should not live on the water. It is much different that the wind blowing debris into the canal tidal waters. I ask the Secretary of DNREC to consider an ordinance to fine residents who intentionally use a blower or mower or other means to get rid of their grass and leaves into tidal waters. Proof would have to be in the form of several eyewitnesses and or a video of the violation. I also find burnt wood from barb-ques/fires that people throw into the canal, and other residents throwing cut weeds directly into the canal (witnessed by John Stewart, former neighbor). Thank you for your time and consideration. William J. Winkler Sr.”

This Technical Response Memorandum (TRM) presents the Wetlands and Waterways Section’s findings regarding the above-referenced permit application, the public comments received during the public notice period, the testimonies given during the public hearing, and the field observations.

CONCLUSION

Through agency consultation, the applicant has proposed to accomplish their purpose of achieving navigable water depths while minimizing environmental and public impacts. Additionally, the applicant is seeking compliance for their docking facility. In summary, the revisions to the proposed project included the following:

- To be consistent with the controlling water depth of the Lagoon, the proposed dredge depth was minimized from the initial request of 4 foot below mean low water to 3 foot below mean low water.
- In consideration of public concerns, the location of the area to be dredged was modified to incorporate a 10-foot buffer from the original objecting commenter’s bulkhead on both the east and south-facing shared property lines.
- To bring the docking facility into compliance, the applicant included a request to authorize the existing dock extension and access steps through the after-the-fact permit approval process.

Furthermore, after the public hearing, the original commenter in objection to the project provided conditional approval of the project. He stated he was in agreement with the project as long as the dredging incorporated a 10-foot distance from both of his bulkheads which is in alignment with the final revisions of the project. The commenter further requested that the Secretary consider a process “to fine residents who intentionally use a blower or mower or other means to get rid of their grass and leaves into tidal waters. Proof would have to be in the form of several eyewitnesses and or a video of the violation.” Since leaves and grass are organic materials that may naturally find their way into the waterway, it is difficult to take enforcement on individuals by their presence alone. Additionally, small amounts of organic materials will quickly degrade back into the environment. However, the WWS consistently proceeds through enforcement action when video and/or photographic evidence is presented for excessive amounts of dumping of organic materials.

In reviewing the applicable statues, regulations, and weighing public benefits against detriments, the WWS finds that the authorization of the as-built docking facility structure and maintenance dredging as described in the application for the Subaqueous Lands Permit by Andrew M. Bolduc and Maureen A. Bolduc with revisions to address the expressed concerns complies with the Regulations administered by the WWS.

In the event the Secretary determines that this project should be approved, the draft Subaqueous Lands Permit authorization is enclosed with appropriate conditions for consideration.

Enclosures: Department’s Wetlands and Waterways Section Presentation
Draft Subaqueous Lands Permit









BOLDUC TRM

Final Audit Report

2024-06-25

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