STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL
DIVISION OF WATER
RICHARDSON & ROBBINS BUILDING
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS LANDS

PHONE
(302) 739-9943

September 15, 2021

Lawton Family
c/o Joseph Ribinsky
33805 Lawton Lane
Millsboro, DE 19966

Coastal and Estuarine Research, Inc.
c/o Evelyn Maurmeyer
P.O. Box 674
Lewes, DE 19958

RE: Application to construct a new 10 slip marina in Herring Creek located northwest of the terminus of Sisters Lane, Millsboro, Sussex County, DE
Tax Parcel No. 234-18.00-51.06

Dear Mr. Ribinsky and Ms. Maurmeyer,

This letter serves as notification of items that have been identified in your application during review by the Department of Natural Resources and Environmental Control (DNREC), Wetlands and Subaqueous Lands Section (WSLS) and public comments received before and during the February 24, 2021 public hearing. These items must be addressed before the WSLS can continue the review of your application and render a recommendation to the Hearing Officer. The application provided needs the following items clarified:

1. After a preliminary legal review of the application, the marina classification must be clearly identified. I have identified three different marina classifications below that may be applicable to the marina, and the manner by which the WSLS may deem it appropriate to proceed toward using this classification of marina. The applicant may choose one of the following:
    - Commercial Marina: A commercial marina is operated primarily for profit. This option may be selected if the applicant is proposing to sub-lease slips out to non-property owners of tax parcel no. 234-18.00-51.06. The applicant would need to provide the WSLS evidence of the appropriate corresponding zoning approval for the subject waterfront property.
    - Recreational Community Marina: A recreational community marina is operated for the exclusive recreational use of members of a planned residential community as designated by the Sussex County Planning and Zoning. This classification may be selected if the applicant plans to use the parcels identified in the attached submitted Figure 3 as justification for the requested number of slips. If this option is selected, the applicant will need to submit Sussex County approval of a community. This should clearly identify what parcels are included in the community. However, it has been noted that subsequent to the February 24, 2021 public hearing, at least one of the included parcels have been sold and others are listed for sale. Again, if this option is selected, the parcels included in

the community will need to be clearly identified as it may have been altered through the sale of parcels.

- Recreational Private Marina: A recreational private marina is operated for the exclusive recreational use of the owner(s) of the subject waterfront property. If the applicant selects this marina classification, the submitted boat registrations will be used as justification for the number of slips. Since eight boat registrations were submitted from the property owners, justification will need to be provided for the additional two slips.

2. The Operations and Maintenance (OM) Plan needs to memorialize the rights and obligations to each identified marina slip user. This includes, but is not limited to, identifying the individuals who will have access to the slips, explaining how the slips will be managed/allotted and identifying the harbormaster and their obligations. The harbormaster obligations should include ensuring all marina users comply with all aspects of the OM plan and taking appropriate action to deal with marina users who violate any provision of the plan. Note, impacts to the public's ability to harvest and consume shellfish is a consideration when reviewing new or expanded marina applications and Herring Creek has been deemed nearing carrying capacity. Since this issue may limit future expansion of the marina, you may wish to include that the marina users' rights and obligations are subject to change prior to periodic re-submittal of the OM Plan. In addition to the above items, the OM Plan needs to update the following:
    - The marina overview and marina rules and regulations need to clearly identify the classification of marina and identify the individuals the marina will be servicing.
    - A harbormaster needs to be designated.
    - Dates need to be included in the seasonal wet storage reduction plan.
    - Fuel/oil/sewage spill containment equipment needs to be provided on the marina site.
    - Fire protection systems need to not just comply with the U.S. Coast Guard but also with local fire codes and with NFPA 303, Fire Protection Standard for Marinas and Boatyards. An approved final fire protection plan from the Office of the State Fire Marshall will be required to be submitted when completed.
    - Procedures to be used by the harbormaster or marina personnel for hurricanes or severe weather need to be updated.
    - Posting a sign identifying the location of the nearest pumpout station.
    - Posting the approved OM plan in a prominent place within the marina to be available for inspection.
    - Methods to reduce light pollution needs to be included.
    - Restrictions on vessel speeds and wakes need to be addressed.
    - Floatation devices need to be identified as being provided on the marina docking facility.

3. We have previously discussed the concern for the potential of additional mooring spaces at the most channelward end of the marina as it is currently designed. You have stated that you are amenable to a special condition of the approval indicating no mooring is permissible. The project plans needs to be updated to reflect that no mooring will be allowed at the channelward "T" section of the docking facility and signage will need to be posted at this location.

4. A bathymetric survey, by a signed and sealed professional engineer or land surveyor, is required to be submitted where the docking facility is proposed. The survey needs to include the specific location of the proposed docking facility annotated with latitude and longitude coordinates (on the shoreline) and overlay the docking facility on the bathymetry. Note, mooring slips should not be designed in locations that cannot provide adequate navigational depths and would require frequent dredging. As previously discussed, there are concerns for adequate depths at the most landward slips. A redesign of the marina facility may be required if adequate water depths are not currently available.

5. The marina layout needs to be submitted. This should include an expanded view of the marina identifying the location of the main docking facility, the existing boat ramp, the location of the spill containment equipment, postage of signage for the nearest pumpout and OM Plan, location of designated parking for half the number of allotted slips, floatation devices and fire protection systems and other items as deemed appropriate.

6. A letter was provided by Procino-Wells & Woodland, LLC, explaining the ownership of the waterfront property. The document describes 1/8 ownership to James Jr. and Catherine Travers. Clarification is needed if the letter meant to describe Jimmy Travis, who signed the letter approving Joe Ribinsky as the signatory authority for the application. Note, the last name is slightly different. An updated letter from the law firm is required.

The above list of necessary clarifications are those that have been identified during the WSLS review and may not represent other, as yet unidentified, issues. Failure to address these items, in writing, within 60 days of your receipt of this notification may result in the WSLS recommending a denial of the application.

If you have any further questions regarding this matter, please feel free to call Julie R. Molina of the Wetlands and Subaqueous Lands Section at (302) 739-9384.

Sincerely,

Steven M. Smailer
Environmental Program Administrator
Division of Water

Enclosure: Figure 3

Lawton Information Request

Final Audit Report 2021-09-15

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