

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
Cabinet Secretary, Department of Natural Resources and Environmental Control

FROM: Lisa A. Vest *LAV*
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Permit Application of Sunrise Ventures, LLC, to construct a new 20 slip community marina, to install shoreline stabilization, and to conduct maintenance dredging in the Lewes and Rehoboth Canal, located south of the intersection of Kaitlyn Drive and Oyster House Road, Rehoboth Beach, Sussex County, Delaware, thus necessitating Applicant to obtain the following: (1) a Marina Permit; and (2) a Subaqueous Lands Permit and Water Quality Certification.

DATE: September 30, 2019

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Tuesday, May 28, 2019, at 6:00 p.m. by the Department of Natural Resources and Environmental Control ("DNREC", "Department") at the DNREC office located at the Indian River Marina, 39415 Inlet Road, Rehoboth Beach, Delaware, to receive comment on the permit application of Sunrise Ventures, LLC ("Applicant"), to obtain the following: (1) a Marina Permit; and (2) a Subaqueous Lands Permit and Water Quality Certification. The Applicant seeks to construct a new 20 slip community marina, to install shoreline stabilization, and to conduct maintenance dredging in the Lewes and Rehoboth Canal, located south of the intersection of Kaitlyn Drive and Oyster House Road, Rehoboth Beach, Sussex County, Delaware ("proposed project").

The Applicant's proposed project is subject to the requirements of Delaware's *Subaqueous Lands Act* (7 Del.C. Chapter 72), the Department's *Marina Regulations* (7 DE Admin. Code 7501), the *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), the *Regulations Governing the Control of Water Pollution* (7 DE Admin. Code 7201), Section 401 of the federal *Clean Water Act*, and 7 Del.C. Chapter 60.

It should be noted that the design of this proposed project has been modified significantly from the application originally received by the Department in this matter. The original application, received on April 10, 2018 by the Department's Division of Water, Wetlands and Subaqueous Lands Section ("WSLS"), was submitted by Environmental Resources, Inc., on behalf of Oyster House Village DE, LLC. The proposed project was then advertised for a 20-day public notice period on May 30, 2018. During that time, the WSLS received several concerned calls from the neighboring homeowners and communities. An informal meeting on the proposed project was held on June 10, 2018 with the Bay Harbor Homeowners Association, the Applicant's consultant, and Tyler Brown of the Department's WSLS.

As a result of the Department's initial review of the Applicant's original application, and based on agency consultation, several modifications were recommended and made to the proposed marina. These modifications were made by the Applicant prior to the public hearing held in this matter on May 28, 2019, in order to (1) address concerns regarding this proposed project that were voiced at the meeting noted above; and (2) comply with the statutory and regulatory requirements noted above.

As required by the *Regulations Governing the Use of Subaqueous Lands*, the Applicant's name as stated on the original application was changed from Oyster House Village DE, LLC, to the current property owner, Sunrise Ventures, LLC. Although Oyster House Village DE, LLC is the contract purchaser and equitable owner, the final transfer of the property has not yet occurred. Should the Secretary issue this permit, the WSLs approvals will be updated to reflect the new property owner (but only after final transfer of property ownership).

In addition to the Applicant's name change, the following modifications were also made to the proposed project:

- A reduction in the length of the dock by 48 linear feet;
- A reduction in the length of riprap revetment by 135 linear feet;
- The relocation of the existing DNREC Shoreline and Waterway Management dredge operations compound (to allow continued public use of the unimproved boat ramp);
- An additional five (5) cubic yards of riprap associated with two stormwater outfall aprons;
- A reassessment which calculated approximately 37 cubic yards less material to be dredged; and
- A new disposal location based on the DNREC Groundwater Protection Branch review (to eliminate concerns associated with the brownfield site).¹⁰¹

After receiving the final application modifications on March 26, 2019, the Department's public hearing notice was published on April 17, 2019. A total of four (4) letters of objection were received by the Department concerning this proposed project. Concerns raised included the proposed marina community being constructed on a brownfield site, the perceived "lack of public transparency" during the time period when the Department's Site Investigation and Restoration Section ("SIRS") conducted its review of this matter, the staging of dredge operations by the Department's Shoreline and Waterway Management, and the location of the marina being sited in a constricted section of the canal.

Additional concerns voiced by the public in this matter included potential impacts to water quality, the increase of noise pollution, the manner in which this marina (if permitted) would be operated, and the proposed location of the marina being on lands owned by the United States of America.

The final application submitted by Sunrise Ventures, LLC proposes the construction of a new 20 slip minor marina by installing a 6 foot wide by 13 foot long section of access pier, a 6 foot wide by 4 foot long section of access pier, a 6 foot wide by 434 foot long section of dock with a 38 foot long section constructed over uplands (for a total dock length of 472 linear feet), and a 6 foot wide by 7 foot long kayak launch ladder. Additionally, the Applicant seeks to stabilize the shoreline in three separate areas by installing 190 linear feet of riprap revetment, 145 linear feet of riprap revetment, and to repair by replacement 76 linear feet of bulkhead.

In addition to the above proposal, the Applicant also seeks permission to construct two (2) stormwater outfall aprons protruding from the riprap revetment, composed of a total of five (5) cubic yards of riprap, and to mechanically maintenance dredge approximately 263 cubic yards to a depth ranging from -2.0 feet to -3.5 feet NAVD88 in the Lewes and Rehoboth Canal, located south of the intersection of Kaitlyn Drive and Oyster House Road, Rehoboth Beach, Sussex County, Delaware. The dredged material would be disposed of via water-tight dump trucks to a previously approved borrow pit disposal area located northeast of the intersection of Irons Lane and Old Mill Road at Tax Parcel #134-7.00-187.00, in Dagsboro, Delaware (“Application”).

The Department held its public hearing concerning this matter on May 28, 2019, which was attended by the Department’s WSLs staff, representatives of the Applicant, and individuals from the public. Comment was received from the public at that hearing, and will be discussed in further detail below. Proper notice of the hearing was provided as required by law.

II. SUMMARY OF THE PUBLIC HEARING RECORD:

The public hearing record (“Record”) consists of the following documents: (1) a verbatim transcript; (2) ten documents introduced by Department staff at the public hearing held on May 28, 2019, and marked accordingly by this Hearing Officer as “DNREC Exhibits 1-10”; (3) one large drawing of the project, introduced by the Applicant’s consultant, Edward Launay (of Environmental Resources, Inc.) at the time of the aforementioned public hearing, and marked accordingly as “Applicant Exhibit 1”; and (4) Technical Response Memorandum from Julie R. Molina, Environmental Scientist, WSLs, dated September 18, 2019.

The Department's persons primarily responsible for reviewing this application, Ms. Molina, along with Tyler Brown, Program Manager, WSLs, Division of Water, developed the Record with the relevant documents in the Department's files.

Following opening remarks from this Hearing Officer, Ms. Molina offered a brief presentation for the benefit of the Record. Ms. Molina explained that, although the marina project is located on lands owned by the United States of America, permits are available through the U.S. Army Corps of Engineers ("USACE") for adjoining property owners to have recreational water access. The Department's presentation also included an overview of the initial application versus the final revised proposal for this marina (as previously set forth above).

Subsequent to the Department's presentation, Mr. Launay proceeded to offer a brief presentation on behalf of the Applicant, again for the benefit of the Record. Mr. Launay reiterated the modifications already made to the project, as well as the routine practice of the USACE authorizing water access to property owners directly adjacent to the waterfront property owned by the United States of America.

Mr. Launay stated that the proposed project proposes an improvement to the site, since it will provide remediation to the severe bank erosion, and include removal of the existing deteriorated structures in subaqueous lands. He also addressed the concerns of maintaining public access to the existing unimproved boat ramp on the site. To accommodate those concerns, the Applicant revised its originally proposed relocation of the DNREC dredge operation compound, thus allowing the unimproved boat ramp to remain accessible to the public.

Mr. Launay concluded his presentation by emphasizing that the uplands on the property of the United States of America is still open to the public, and that only the marina docking facility is to be used exclusively by the community.

After the Applicant's presentation had concluded, the floor was then opened for the purpose of offering public comment on the Record regarding this proposed project. Concerns expressed at the time of the public hearing included the issue of boating safety, specifically, that the canal is already very crowded and congested, and that the no wake zone is already routinely violated. Other commenters voiced concerns over the proposed dredging activity associated with the marina, the staging of dredge operations by DNREC being a noise nuisance, noise pollution arising from the daily operations of a marina, the output of pollution by the additional vessels, and the resulting impact to flora and fauna. One commenter voiced concern on the uncharacteristic development of a community marina on a narrow canal, where most water access structures are for single-family homes.

There was also concern that such a project may set a precedent for the construction of more marinas on the canal. There were also several questions concerning this proposed project which were raised by members of the public at the time of the public hearing on May 28, 2019. These questions were captured in the court reporter's transcript, and were thereby incorporated into the Record developed in this matter.

Subsequent to the aforementioned public hearing held in this matter, this Hearing Officer requested a Technical Response Memorandum (“TRM”) from the technical experts in the Department’s Division of Water. Specifically, this TRM was asked to (1) address the concerns voiced by the public at the time of the public hearing; (2) provide a formal regulatory review of the Applicant’s proposed marina project; and (3) offer the Division of Water’s conclusions and recommendations with regard to the Applicant’s pending permit application for the benefit of the Record generated in this matter.

I find that the Division of Water’s TRM offers a detailed regulatory review of all aspects of the Applicant’s proposed marina project, identifies all of the concerns raised at the public hearing of May 28, 2019, and responds to them in a balanced manner, accurately reflecting the information contained in the Record. Thus, the aforementioned TRM is attached hereto as Appendix “A” and expressly incorporated herein as such.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

This application is for a minor marina project located south of the intersection of Kaitlyn Drive and Oyster House Road, Rehoboth Beach, Sussex County, Delaware. Specifically, the Applicant’s project proposes the construction and installation of a new 20 slip community marina, to install shoreline stabilization, and to conduct maintenance dredging in the Lewes and Rehoboth Canal, as set forth above.

Preliminarily, I find that the proposed project will require the Applicant to obtain a Marina Permit, a Subaqueous Lands Permit, and a Water Quality Certification from the Department's WSLS. I further find that the Applicant's proposed project is subject to the following federal and state statutory and regulatory requirements:

- Delaware's *Subaqueous Lands Act* (7 Del.C. Chapter 72);
- The Department's *Regulations Governing the Control of Water Pollution* (7 DE Admin. Code 7201)
- The Department's *Marina Regulations* (7 DE Admin. Code 7501);
- The Department's *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504);
- Section 401 of the federal *Clean Water Act*; and
- 7 Del.C. Chapter 60.

In reviewing the applicable statutes and regulations, as well as weighing public benefits of this project against potential detriments, the Department's experts in the Division of Water have concluded that the construction of the proposed docking facility, maintenance dredging, shoreline stabilization, and stormwater outfalls, as described in the Application of Sunrise Ventures, LLC, complies with the applicable Regulations administered by the WSLS. The Applicant has applied for one structure to serve the entire community, which the WSLS views positively, since it is a reduction of an overall environmental impact in comparison to the construction of multiple structures for single-family homes.

The Department notes in its TRM that public use impacts have been minimized in the proposed project, since the Applicant has requested 20 slips for a community composed of 30 single-family homes. Furthermore, no portion of the proposed docking facility will encroach within the 10 foot wide buffer of the 55 foot wide federal navigational channel.

In addition to the above, the Department notes that minor maintenance dredging along the shoreline bank has been requested in association with a canal once dredged by the USACE. Adequate water depths should be sustained without the need for frequent dredging events. Additionally, the proposed shoreline stabilization activities are an improvement to the current deteriorated site conditions. The Lewes and Rehoboth Canal is a federally maintained navigational channel, predominantly used as a travel lane from the Delaware Bay to the Inland Bays, so potential water use conflicts are deemed minimal by the Department.

As noted previously herein, the Applicant developed alternatives to the originally proposed project in order to minimize environmental impacts. Several modifications were made to the initial application, to include (1) a reduction in the length of the dock by 48 linear feet; (2) a reduction in the length of riprap revetment by 135 linear feet; (3) a revision of the original proposed relocation of the DNREC dredging operation compound to allow continued public use of the unimproved boat ramp; and (4) the relocation of the dredge disposal location in order to eliminate concerns associated with the brownfield site.

The proposed marina has minimized potential sources of contamination by providing a sewage pumpout system, by not providing fueling facilities, and by not allowing major vessel maintenance work to be done on the grounds of the marina. Additionally, the submitted Operations and Maintenance (“O&M”) Plan for the marina has rules and regulations for boat tenants which contain best management practices and tips, including (but certainly not limited to) ways in which to control oil in the bilge, management of vessel sewage disposal, trash, and recycling. Also included within the O&M Plan are emergency procedures and safety precautions to be implemented during hurricanes and severe weather events.

In order to ensure that the concerns voiced by members of the public are addressed, the Department’s WSLS has included numerous special conditions in the draft Marina permit, including a requirement that the unimproved boat ramp remains unobstructed for public use. Additionally, due to simultaneous State and federal permitting processes, the Applicant will be required to secure and submit to the Department an executed Real Estate license agreement from the Real Estate Division of the Baltimore District of the USACE, formally authorizing the construction and operation of the proposed marina.

The Record reflects that concerns were voiced by members of the public over vessel traffic and public safety associated with this proposed project. In order to address the above referenced concerns, the following special condition has also been included in the draft Marina Permit:

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Any future marina facility expansion or alteration to the approved plans herein shall require a separate authorization from the Wetlands and Subaqueous Lands Section. This includes minor modifications, such as boat/personal watercraft lifts, floating structures, and any other variation that would alter the footprint of the approved marina.

The State of Delaware is charged with upholding the Public Trust Doctrine, which has been used historically in protecting the public's rights to fishing, commerce, navigation, recreation and even preservation as an appropriate public use. The Department recognizes that there are concerns associated with this project, but has balanced those concerns.

The Record developed in this matter indicates that the Department's experts have considered all statutes and regulations that govern projects such as the Applicant's proposed project, and have recommended issuance of all permits necessary for completion of the same. I find and conclude that the Applicant has adequately demonstrated its compliance with all requirements of the statutes and regulations as noted herein, and that the Record supports approval of the permit application submitted by Sunrise Ventures, LLC.

In conclusion, I recommend that all permits required for this proposed minor marina, consistent with the Record developed in this matter, be issued by the Department in the customary form, and with appropriate conditions.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has jurisdiction under 7 *Del. C.* §§6003, 6004, 6006(4), and all other relevant statutory authority, to make a final determination on the Applicant's permit application after holding a public hearing, considering the public comments, and all information contained in the Record generated in this matter;
2. The Department provided proper public notices of the permit application of Sunrise Ventures, LLC, and of the public hearing held on May 28, 2019, and held said hearing to consider any public comment that may be offered on the same, in a manner required by the law and regulations;
3. The Department considered all timely and relevant public comments in the Record, as established in the Department's above referenced TRM;
4. The Department has carefully considered the factors required to be weighed in issuing all permits required of this proposed marina project, and finds that the Record supports approval of the Applicant's permit application, and the issuance of all required permits associated with same;
5. The Department shall issue the following permits to the Applicant: (1) a Marina Permit; and (2) a Subaqueous Lands Permit and Water Quality Certification.

Furthermore, said permits shall include all special conditions as set forth in the Department's draft permits, to ensure that Delaware's environment and public health will be protected from harm;

6. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
7. The Department shall serve and publish its Order on its internet site, and shall provide legal notice of the Order in the same manner that the Department provided legal notice of the Application.



LISA A. VEST
Public Hearing Officer

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Attachments/Appendix:

Appendix A: Division of Water TRM (09/18/19)

APPENDIX “A”



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901



WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-9943
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Technical Response Memorandum

To: Lisa A. Vest, Hearing Officer

Through: Virgil Holmes, Director, Division of Water *VH 9/20/19*
Tyler Brown, Program Manager, Wetlands and Subaqueous Lands Section *T.B.*

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

Date: September 18, 2019

Subject: Sunrise Ventures, LLC, Marina Permit Application, Subaqueous Lands Permit Application, and Water Quality Certification Application

INTRODUCTION

On April 10, 2018, the Wetlands and Subaqueous Lands Section (WSLS), Division of Water, Department of Natural Resources and Environmental Control received an application from Environmental Resources, Inc. submitted on behalf of Oyster House Village DE, LLC to construct a new 20 slip community marina, to install shoreline stabilization and to conduct maintenance dredging in the Lewes and Rehoboth Canal, located south of the intersection of Kaitlyn Drive and Oyster House Road, Rehoboth Beach, Sussex County, Delaware. The proposed project is subject to the requirements of the Subaqueous Lands Act (7 Del C., Chapter 72) and the Regulations Governing the Use of Subaqueous Lands, the Marina Regulations and (7 Del C., Chapter 60) and the Department's Regulations Governing the Control of Water Pollution and Section 401 of the Clean Water Act.

The project was advertised for a 20-day public notice period on May 30, 2018. During that time, the WSLS received several concerned calls from the neighboring homeowners and communities. At the request of the Bay Harbor Homeowners Association, an informal meeting on the proposed new marina project was held on Sunday June 10, 2018. This informational meeting was held with the HOA and the applicant's consultant and attended by Tyler Brown of DNREC, WSLS. Upon conclusion of the public notice period, the WSLS received one written comment in opposition to the project. The objector expressed concerns over impacts to flora and fauna and additionally stated that "the conversion of government land to private use for the benefit of a few appears to be counter to the original construction and purpose of the canal which was to be used for transportation of agricultural products." Furthermore, the objector requested a public hearing be held.

During the initial review of the application and based on agency consultation, several modifications were recommended and made to the proposed marina application. As required by the Regulations Governing the Use of Subaqueous Lands, one of the changes involved revising the applicant's name to the current property owner, Sunrise Ventures, LLC. Although Oyster House Village DE, LLC is the contract purchaser and equitable owner, the final transfer of the property has not occurred. If the project is authorized, the WSLS approvals can be updated to reflect the new property owner but only after final transfer of property ownership.

After receiving final application modifications on March 26, 2019, the announcement for a public hearing was placed on a 20-day public notice period on April 17, 2019. After advertisement of the public hearing, there were a total of four letters of objection to the project. The additional objectors had concerns over the marina community being constructed on a brownfield site and the lack of public transparency when DNREC, Site Investigation and Restoration Section (SIRS) conducted their review. Once again, there were objections over the marina being proposed on lands owned by the United States of America. Additional concerns centered on the location of the marina being sited in a constricted section of the canal, the impacts to water quality, the staging of dredge operations by DNREC Shoreline and Waterway Management as well as concerns over how the marina will be operated.

The applicant, Sunrise Ventures, LLC's final application proposes to construct a new 20 slip minor marina by installing a 6 foot wide by 13 foot long section of access pier, a 6 foot wide by 4 foot long section of access pier, a 6 foot wide by 434 foot long section of dock with a 38 foot long section constructed over uplands (for a total dock length of 472 linear feet) and a 6 foot wide by 7 foot long kayak launch ladder; to stabilize the shoreline in three separate areas by installing 190 linear feet of riprap revetment, 145 linear feet of riprap revetment and to repair by replacement 76 linear feet of bulkhead; to construct two (2) stormwater outfall aprons protruding from the riprap revetment composed of a total of 5 cubic yards of riprap; to mechanically maintenance dredge $263 \pm$ cubic yards to a depth ranging from -2.0 feet to -3.5 feet NAVD88 in the Lewes and Rehoboth Canal, located south of the intersection of Kaitlyn Drive and Oyster House Road, Rehoboth Beach, Sussex County, DE and to dispose of the dredged material via water-tight dump trucks to a previously approved borrow pit 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, DE.

The public hearing was held on May 28, 2019. The public hearing was attended by WSLs staff, the applicant's representatives and individuals from the public. During the Public Hearing, the Hearing Officer, Lisa A. Vest, 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 Subaqueous Lands Section. Mrs. Molina explained that although the marina project is located on lands owned by the United States of America, permits are available through the U.S. Army Corps of Engineers (USACE), for adjoining property owners to have recreational water access. The presentation also included an overview of the initial application verses the final revised proposal for the marina. Several major modifications were made to the project, to include: the name of the applicant (as described above); a reduction in the length of the dock by 48 linear feet; a reduction in the length of riprap revetment by 135 linear feet; the relocation of the existing DNREC Shoreline and Waterway Management dredge operations compound; an additional 5 cubic yards of riprap associated with two stormwater outfall aprons; a reassessment which calculated 37± cubic yards less material to be dredged and a new disposal location based on the DNREC Groundwater Protection Branch review. To conclude, Mrs. Molina presented the exhibits of the public records on behalf of the Department.

Subsequently, the applicant's consultant of Environmental Resources, Inc., Edward M. Launay gave a presentation. Mr. Launay reiterated the modifications already made to the project as well as the routine practice of the USACE to authorize water access to property owners directly adjacent to the waterfront property owned by the United States of America. Additionally, he stated that the project proposes an improvement to the site since it will provide remediation to the severe bank erosion and include removal of the existing deteriorated structures in subaqueous lands. Mr. Launay also addressed previously voiced concerns of maintaining public access to the existing unimproved boat ramp on the site. To accommodate, the applicant revised their original proposed relocation of the DNREC dredge operation compound which allows the unimproved boat ramp to remain accessible to the public. He concluded by emphasizing that the uplands on the United States of America property is still open to the public and only the marina docking facility is to be used exclusively by the community. Mr. Launay then provided the project plan as an exhibit on behalf of the applicant.

At that time, Ms. Vest opened the forum for public comment. Several commenters stated that the canal is already very crowded and congested and that the no wake zone is routinely violated. Others voiced concerns over the proposed dredging activity associated with the marina and the staging of dredge operations by DNREC as a noise nuisance as well as noise pollution from the daily operations of a marina. They also expressed concern on the output of pollution by the additional vessels and impacts to flora and fauna. Another commenter voiced concern on the uncharacteristic development of a community marina on a narrow canal where most water access structures are for single-family homes. This was also a concern from the viewpoint that this project would set a precedent for the construction of more marinas on the canal. In addition, several questions were presented by the public. Although Ms. Vest did not allow for the public hearing to include a question and answer session, she requested a formal response to all questions through the Department's Technical Response Memorandum. Listed below are the questions posed relating only to the submitted application and purview of the WSLs.

Q: “How are they [the vessels] going to be removed at the end of the boating season?....I just don’t know whether the existing boat ramp is going to be used to take all these boats out at the end of the year.”

A: The vessels will be removed at the vessel owner’s discretion at the end of the boating season. The existing unimproved boat ramp is not a part of the marina. Due to the size of this ramp, it can likely only handle the launching of small vessels such as jon boats or jet-skis. Nevertheless, to ensure that the ramp remains open for public use and does not get misconstrued as being a part of the marina, the WSLs included a special condition in the draft authorizations which requires that the unimproved boat ramp remain unobstructed for public use.

Q: “The area that’s going to be fenced in with the heavy equipment, are you talking about on-site, or are you talking about off-site?....Where is the heavy equipment that we are talking about, how is it getting there? How is it going to impact the surrounding communities during the development of the project? And then, once it’s done, is that equipment going to be there?”

A: DNREC Shoreline and Waterway Management currently holds a real-estate license from the U.S. Army Corps of Engineers to stage their dredge operations on the lands owned by the United States of America. The existing fenced compound on-site already stores heavy equipment in order to maneuver the dredge pipeline. This equipment will be staged in the fenced new location which is slightly adjusted from its existing location. The impact to the surrounding communities should remain the same since the compound is already in existence.

Q: “One of the main reasons I bought this [property] was access to the water that I have with – they say it’s a little ramp. But it’s not big enough to put my boat in but big enough to put my jet-skis in.....But am I going to be able to put my jet-skis in the water, which is right by my house?”

A: The unimproved boat ramp will remain accessible for public use. The provisional permit from the U.S. Army Corps of Engineers includes a special condition which requires that the general public be allowed access on and through the government lands. This includes the unimproved boat ramp since it is simply an un-vegetated water access point with no structure associated with it and is on said lands. In addition, the DNREC Shoreline and Waterway Management compound’s proposed relocation would allow the continued public use of the unimproved boat ramp. Consequently, the current use of the ramp will remain the same.

Q: “How far does the new bulkhead go up in front of – I’m from Blue Point Villas, and there are trees that have fallen into the canal presently that are on DNREC property. Are they part of the cleanup of the canal right there and the new bulkhead that’s going in?”

A: The shoreline remediation activities are proposed to take place on the United States of America property located on tax parcel no. 334-19.00-173.00 but only to the northernmost extent south of the unimproved boat ramp and parallel to the applicant’s property along tax parcel no. 334-19.08-42.00. The remediation work is not proposed to occur along the United States of America property waterfrontage adjacent to Blue Point Villas.

Q: "Is the canal going to be dredged to the point where it does permit two boats to go side by side through there?"

A: The dredge activity of removing 263± cubic yards of material is proposed to take place along 485 linear feet of the shoreline. The limits of dredging will meet the existing -3.5 foot NAVD88 depth which is outside of the ten foot buffer of the federal channel. The area to be dredged will essentially only impact the slip berthing areas along the dock.

Q: "With the 20 plus boat slips going in there, that's a very narrow section of the canal. And there is already, at certain time periods, there are boats that fly up and down that canal. And how is that going to be monitored if we put an additional 20 boats that are going to be docked there?"

A: The DNREC Fish & Wildlife Natural Resources Police enforces a variety of environmental laws and regulations, including the no wake zone on the Lewes and Rehoboth Canal. The public is free to contact them regarding enforcement issues at 1-800-292-3030.

Q: "How are the dredging spoils going to be removed?"

A: In order to preserve the existing mature trees on the site, there are two alternate methods of construction. One option would allow the dredge spoils to be mechanically excavated by a long reach excavator from the uplands and directly placed on dump trucks with a sealed bed. If this is not possible, then a barge-mounted excavator would load the material either directly to the water-tight dump trucks or temporarily place the material on a hopper barge. Either scenario will result in the dredged material being loaded into the water-tight dump trucks and then transported to a previously approved borrow pit 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, DE

Q: "Who knows if they will keep it marina [community] owners only, or will they sublet?"

A: The application for the marina has been proposed as a community amenity limited to the residents of the Oyster House Village community. Since the application is requesting 20 mooring areas for a residential community of 30 single-family homes, it would be in the community's best interest to limit the use of the marina to residents only. However, the WSLs has included a special condition in the draft authorizations which restricts the use of the marina to the residents of the Oyster House Village community only.

Q: "I seen these two storm sewer outlets going into the canal. And I'm a little confused as to where all this stuff begins? Is it in the parking lot? If it is, your waste is going into the canal."

A: The two stormwater outfalls are proposed for the discharge of treated stormwater and will not carry sewage. The residential community development is proposing to meet stormwater management requirements through the conveyance of stormwater runoff from the community property through underground pipes to discharge directly into the canal.

Q: "How the ongoing enforcement and our quality of life are maintained if this [marina] development is approved?"

A: As stated above, the Fish & Wildlife Natural Resources Police and the Environmental Crimes Unit handles enforcement issues. However, ongoing compliance to the law and regulations will be handled through the post-construction inspection, random or complaint-based inspections as

well as the periodic review of the Operations and Maintenance Plan every four years by the WSLs. The purpose of the Operations and Maintenance Plan is to ensure compliance with statutory and regulatory requirements during routine operations of the marina. In addition, a site inspection is conducted during each periodic review of the updated Operations and Maintenance Plan.

Q: “How many other marinas exist along the canal? I’m familiar with the ones up in Lewes in the commercial area, but I am not aware of any other marina of this size anywhere else along the canal. And if there are any along the canal, I would like to get some information on that in terms of where it was built and if any issues have been uncovered.

A: There are several marinas between the Town of Lewes and the Rehoboth Bay on the Lewes and Rehoboth Canal. A few conventional marinas that were previously in operation or currently are include Snug Harbor located on tax parcel no. 334-14.05-31.00, Henlopen Acres located on tax parcel no. 334-14.09-10.00 and Bay Vista located on tax parcel no. 334-19.16-25.03. Furthermore, the Marina Regulations applies to the following: “any commercial, public, recreational, or private marina that is on or adjacent to the water and: 1) contains five or more slips, or 2) provides berthing for one or more headboats...Any vessel maintenance or repair yard that is on or adjacent to the water...All public or commercial boat ramps...Recreational boat ramps with five or more slips, or associated upland ancillary facilities such as fueling or vessel maintenance facilities.” Therefore there are several other locations along the canal which would meet the definition of a marina. The Delaware Freedom of Information Act (FOIA) provides an avenue in order for the public to have access to the requested information. The public may contact the DNREC FOIA Coordinator at 302-739-9000 for further information on how to make a formal FOIA request.

Ms. Vest closed the official record at the end of the public hearing proceedings.

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

REGULATORY REVIEW- SUBAQUEOUS LANDS

The following review evaluates the proposed project with respect to the requirements of the Subaqueous Lands Act (7 Del. C., Chapter 72 (Chapter 72) and the Regulations Governing the Use of Subaqueous Lands (Regulations) adopted in accordance with the statute. The Regulations provide the criteria for evaluating projects that are proposed to be constructed in public or private subaqueous lands. The burden is on the applicant to prove to the Department that the requirements of these Regulations have been met; and if the granting of any permit, lease or approval will result in loss to the public of a substantial resource, or that the loss has been offset or mitigated. The Department’s regulatory evaluation and the public comments received are addressed according to the pertinent sections of the Regulations as follows.

Section 4.0 Criteria of Permits, Leases and Letters of Authorization - Evaluation Considerations. Each application shall be reviewed based on the consideration of the performance specifications, standards and other criteria listed in this section for the type of activity proposed.

The most relevant portions of Section 4.0 for the proposed project are discussed below. This includes Section 4.6 - Public Use Impact, Section 4.7 - Environmental Considerations, Section 4.9 - Boat Docking Facilities, Section 4.10 - Installation and Use of Shoreline Erosion Control Measures and Section 4.11 - Activities Involving Dredging, Filling, Excavating or Extracting Materials.

Section 4.6 Public Use Impact - The Department shall consider the public interest in any proposed activity which might affect the use of subaqueous lands.

The proposed activities are within granted public subaqueous lands owned by the United States of America and managed by the USACE. Although the underwater land of the Lewes and Rehoboth Canal is owned by the United States of America, the tidal waterbody is subject to the Regulations Governing the Use of Subaqueous Lands and requires a Subaqueous Lands Permit from the State of Delaware. When determining if an applicant should occupy those granted subaqueous lands, the Wetlands and Subaqueous Lands Section considers Section 2.3.1 of the Regulations Governing the Use of Subaqueous Lands, which states: "Owners of private [in this case granted public subaqueous lands] shall obtain a permit from the Department, pursuant to this regulation, before undertaking any activity on such lands which, as determined by the Department, may contribute to the pollution of public waters, have an adverse impact or destroy aquatic habitats, infringe upon the rights of the public use of the waterway or the public, infringe upon the rights of other private owners, or make connection with public subaqueous lands." The public use impacts most relevant to the proposed project are discussed in Sections 4.6.3, 4.6.5, and 4.6.6 below.

4.6.3 - The potential effect on the public with respect to commerce, navigation, recreation, aesthetic enjoyment, natural resources, and other uses of the subaqueous lands.

Although the Lewes and Rehoboth Canal is owned by the United States of America, the waterway is open for public use as a federal navigational channel. The primary users are private property owners adjacent to the Lewes and Rehoboth Canal and the general public participating in boating, watersports, fishing, and crabbing. Multiple objectors to the project voiced concerns over the narrowness of the canal and the current heavy boat traffic. When evaluating navigational concerns, the WSLs references Section 4.9.2.5 of the Regulations Governing the Use of Subaqueous Lands which states, in relevant part; "In no case shall a structure extend more than 20 percent of the width of the waterbody." In tidal natural features, 20 percent is measured from the mean low water mark of one side of the waterbody to the mean low water mark of the other. The proposed structures are within 20 percent of the width of the waterbody. The closest pinch point is along the 7 foot long kayak launch ladder which is 10 feet away from the 10 foot buffer of the 55 foot wide navigational channel. The main dock varies from 14 to 17 feet away from the 10 foot buffer to the navigational channel. Additionally, the closest private docking facility is located south of the proposed marina and is over 170 feet away. Furthermore, the segment of the Lewes and Rehoboth Canal (Canal) adjacent to the project area is not readily used as a recreational area but rather as a travel lane to other destinations from the Delaware Bay to

the Inland Bays. As a result, it is not anticipated that there will be any significant adverse impacts on navigation with the addition of 20 more vessels.

Members of the public additionally objected to the project, stating that noise pollution from the daily operations of a marina and the staging of dredge operations by DNREC would impair their aesthetic enjoyment of the Canal. The marina is proposed as a docking facility for the purpose of water access and will not provide major vessel maintenance activities or fueling facilities. The noise associated with the minor daily operations of a marina is not something the WSLs can take action on since the navigational channel is available for public use and would limit others' enjoyment of the natural resource. The applicant's marina application is associated with the DNREC dredge operations compound because they are both required to obtain a real-estate license from the USACE for use of the United States of America property. To clarify further, the DNREC Shoreline and Waterway Management compound is already in existence and holds a real-estate license agreement from the USACE to stage their dredge operations on the property. The applicant's construction of a marina will require the DNREC compound to slightly adjust the limits of their occupation on the property which will require their real-estate license agreement to be updated. The level of noise impacting the surrounding communities from the DNREC compound should remain the same since it is already in existence.

4.6.5 - The extent to which the applicant's primary objectives and purposes can be realized without the use of such lands (avoidance).

The applicant's primary objective and purpose is to provide the community an amenity in terms of boat slip availability and water access. The consolidation of vessel facilities into a marina is considered a minimization of possible activities in subaqueous lands and a reduction of overall environmental impacts when compared to the alternative of numerous individual structures along the available shoreline. The applicant is practicing avoidance to a certain degree by eliminating the opportunity or ability for any additional structures to impact subaqueous lands.

If the marina is not constructed, then the Oyster House Village community residents would have to transport their motorized vessels before and after each use to a public boat ramp, or moor their vessels at previously approved private marinas or have the option to apply for the construction of individual docking facilities.

4.6.6 - The extent to which the applicant's primary purpose and objectives can be realized by alternatives, i.e. minimize the scope or extent of an activity or project and its adverse impact.

The Oyster House Village community is proposed to consist of 30 single-family homes and is requesting 20 mooring areas. They are applying for one structure which is proposed to underserve the community, thus minimizing the potential impact on the adjacent subaqueous lands from multiple structures.

Through agency consultation, the applicant worked to realize their purpose and objectives through alternatives. As described above, several modifications were made to the initial application. Minimization of impacts was achieved through reducing the length of the dock by 48 linear feet and by reducing the length of the riprap revetment by 135 linear feet. To accommodate initial concerns that the existing unimproved boat ramp would no longer be

accessible to the public, the applicant revised their original proposed relocation of the DNREC dredge operation compound. Another modification from the initial application involved the relocation of the dredge disposal location. After consultation with the DNREC Groundwater Protection Branch and the DNREC Site Investigation Remediation Section, the applicant decided to minimize the potential for adverse impacts by proposing an alternate disposal location away from the existing brownfield site.

Section 4.7 Environmental Considerations

4.7.1.1 Any impairment of water quality, either temporary or permanent which may reasonably be expected to cause violation of the State Surface Water Quality Standards. This impairment may include violation of criteria or degradation of existing uses.

The public was well informed of the Rehoboth Beach Wastewater Treatment Plant project where treated effluent now discharges to the ocean outfall rather than the Lewes and Rehoboth Canal. Concerns were voiced by the public that the proposed stormwater outfalls would again threaten to impair water quality and discharge sewage into the Canal. The Oyster House Village community development proposes to meet stormwater management requirements though the conveyance of the stormwater runoff from the community property through underground pipes to discharge directly into the Canal. The discharge of stormwater runoff to a natural water feature is a common practice in stormwater management. In order to ensure compliance with the water quality provisions of the Delaware Sediment and Stormwater Regulations, a special condition is included in the draft authorizations to submit an approved Sediment and Stormwater plan for the community development which includes the two stormwater outfalls. The portions of the stormwater outfalls that are within WSLs jurisdiction are the outfall aprons that are largely designed to be incorporated within the proposed riprap revetment with approximately 5 cubic yards of riprap material protruding channelward of the revetment. Best management practices are implemented as permit conditions such as the activity shall be conducted with sound water pollution control practices and in accordance with the DNREC's Surface Water Quality Standards.

An evaluation of water quality and scientific data was submitted by the consultant as part of the Siting and Design Study of the marina as discussed below in Section 11.3. The construction activity and structures associated with the marina will have treated lumber that can leach contaminants; however, this is mostly during the first few months after installation and can be considered minimal. In addition, the proposed marina has minimized potential sources of contamination by prohibiting fish cleaning at the docking facility and the discharge of fish waste into waters adjacent to the marina, by not providing fueling facilities, and by not allowing major vessel maintenance work to be done on the grounds of the marina. Additionally, as discussed in further detail in Section 14.2 below, an Operations and Maintenance (O&M) Plan for the marina was submitted by the consultant.

4.7.1.3 - Any harm to aquatic or tidal vegetation, benthic organisms or other flora and fauna and their habitats.

Although several members of the public expressed concerns over the wildlife currently occupying the uplands, the WSLs can only address concerns relating to the submitted application and jurisdiction of the WSLs.

The docking facility will cause some shading and additional wake, but should allow for the growth of aquatic vegetation and the continued use of the area by benthic organisms. The waterbody is currently used by the general public as a navigational channel along with a multitude of private docks; the addition of a 20 slip docking facility should not have a significant adverse impact on the environment.

According to the DNREC, Division of Fish and Wildlife, Species Conservation and Research Program, the only species of concern known to utilize the Lewes and Rehoboth Canal is summer flounder. The Species Conservation and Research Program submitted written comments recommending a time of year restriction of March 1st to September 30th in which no in-water work is to be conducted. This time of year restriction is implemented as a special condition of the draft authorizations in order to reduce or eliminate impacts to the species of concern.

4.7.5.3 The degree to which the proposed project fits in with the surrounding structures, facilities, and uses of the subaqueous lands and uplands.

One commenter expressed concerns on the uncharacteristic development of a community marina on a narrow canal where most water access structures are for single-family homes. This was also a concern from the viewpoint that this project would set a precedent for the construction of more marinas on the Canal. The Lewes and Rehoboth Canal is approximately ten miles long and is composed of several private residential docks and marinas mostly within the corporate limits of the Town of Lewes. Between the Town of Lewes and the Rehoboth Bay the number of docking facilities dramatically decreases due to the large expanse of State-regulated wetlands that occur along the Canal. However, as previously discussed, there are a number of docking facilities that meet the definition of a marina within the southern portion of the Canal. Furthermore, the consolidation of vessel facilities into a marina is considered a minimization of possible activities in subaqueous lands. As an illustration, the applicant has approximately 645 linear feet of property along the United States property. Section 4.9.6 of the Regulations Governing the Use of Subaqueous Lands states, “minimum frontage adjacent to subaqueous lands for a docking facility for any parcel will be forty (40) feet.” Therefore, there is a potential for separate docking facilities for 16 single-family homes with each property allowed to apply for structures associated with four slips before a marina permit is triggered. This could be a total of 64 additional vessels if single-family homes requested private docking facilities. In contrast, the applicant has requested 20 mooring slips. In addition, by going through the marina permitting process, an Operations and Maintenance Plan is required which ensures ongoing compliance with statutory and regulatory requirements during routine operations.

Section 4.9 Boat Docking Facilities

4.9.2 - General Siting Considerations: Siting of boat docking facilities shall be evaluated on site specific conditions including, but not limited to, location of navigational channel, proximity of existing structures, aquatic habitats, and width and orientation of waterbody. The following criteria will be weighed and balanced when evaluating the siting of boat docking facilities.

The applicant owns approximately 645 linear feet of property along the United States' waterfrontage. The proposed docking facility has been designed to not exceed 20 percent the width of the waterbody and remains outside of the 10 foot buffer to the navigational channel. In addition, the closest docking facility is over 170 feet away. Therefore, the project will not

adversely impact vessel navigation or the existing navigable channel of the Lewes and Rehoboth Canal. Considerations for siting of the boat docking facility are discussed further in Sections 4.9.2.2, 4.9.2.7, 4.9.2.8, 4.9.2.13 and 4.9.7 below.

4.9.2.2 - Structures should be constructed to avoid dredging or filling, with minimal impact on aquatic vegetation and wetlands, and without dead-end or poorly flushed lagoons.

The avoidance of dredging is discussed in detail in 4.9.2.13 below. The proposed maintenance dredging is located on the open waters of Lewes and Rehoboth Canal and would not create a dead-end or poorly flushed lagoon.

Best management practices are typical conditions when authorizing a dredging activity in order to minimize impacts to the environment. In addition, as specified in the environmental siting considerations of the Siting & Design Study required by the Marina Regulations, there are no state-regulated wetlands on-site, no submerged aquatic vegetation on-site and the waterbody is mapped as being prohibited for shellfishing. If approved, a time of year restriction for the dredging activity would be implemented in order to protect species of concern. Upon an evaluation of environmental considerations, there would be relatively short-term impacts to the environment.

4.9.2.7 - Docks and piers should extend out from the shoreline far enough so as to eliminate need for dredging and filling, and provide sufficient height to allow light to penetrate to vegetation underneath and alongside.

In evaluating the conditions of the site, the Lewes and Rehoboth Canal is a narrow waterbody. The proposed docking facility cannot eliminate the need for dredging by extending further channelward without exceeding 20 percent the width of the waterbody or coming in contact with the federal navigational channel. Channelward encroachment would pose a navigational hazard and would be in direct conflict of the Regulations Governing the Use of Subaqueous Lands. The proposed dredging would allow adequate water depths for vessel mooring and also provide sufficient height to allow light to penetrate underneath the fixed structures.

4.9.2.8 - Slips, lagoons, basins, and access channels should be no deeper than the parent waterbody (i.e. no sill), and the depth should slope upward toward the landward extent from the parent waterbody. Exception may be allowed only by individual review of the potential environmental impacts and approval granted by the Secretary of the Department.

The proposed maintenance dredging is to remove 263± cubic yards of material to a depth ranging from -2.0 feet to -3.5 feet NAVD88 around the proposed docking facility within an 8,064± square foot area. Based on the bathymetry submitted, the federal navigational channel varies from a -5 to -6 NAVD88 foot depth at the center of the channel with depths decreasing towards the shoreline. The limits of dredging is proposed to meet the existing -3.5 foot depth contour and taper upward toward the shoreline to a depth of -2.0 feet. The proposed depths meet the above requirements and are within the depths of the parent waterbody.

4.9.2.13 - Dredging to obtain navigable water depths in conjunction with private residential boat docking facilities should be avoided.

The proposed maintenance dredging is for a boat docking facility in conjunction with a private residential community. The requested depths range from -2.0 feet to -3.5 feet NAVD88 with the

local mean low water elevation occurring at -0.8 feet NAVD88. In some areas, the shoreline bank will be pulled back in order to install shoreline stabilization. Eroded bank material is included as a portion of the dredged material with the toe of the proposed shoreline stabilization to meet the proposed -2.0 foot depth. The applicant requesting to excavate 263± cubic yards of material from an 8,064± square foot area is a minor amount of volume to provide adequate water depths for vessel mooring.

Furthermore, the Lewes and Rehoboth Canal was originally dredged in 1913 and is a federally maintained navigational system. Maintenance dredging of the adjacent waters to the channel will help to buffer sediment accretion and preserve the existing depths of the channel.

4.9.7 Applications for the construction of a boat docking/launching facility within a recorded easement/right-of-way, linking non-waterfront properties to the shoreline, must be submitted with a written letter of no objection by the owner of the property containing said conveyance. Location and siting of the structure must satisfy all setback and frontage requirements, as defined by the Department. Applications will not be accepted for private/community structures within approved public easements or right-of-ways.

The applicant owns approximately 645 linear feet of property along the United States' waterfrontage. Although the marina project is located on lands owned by the United States of America, permits are available through the U.S. Army Corps of Engineers and the WSLs, for adjoining property owners to have recreational water access. Since the permitting processes for both agencies are occurring simultaneously, a special condition is included in the draft authorizations to submit an executed license agreement from the Real Estate Division of the Baltimore District of the U.S. Army Corps of Engineers authorizing the construction and operation of the marina.

Section 4.10 - Installation and Use of Shoreline Erosion Control Measures

4.10.1.2 - Efforts shall be made to utilize shoreline erosion control methods that best provide for the conservation of aquatic nearshore habitat, maintain water quality, and avoid other adverse environmental effects. These include, but are not limited to, vegetation, revetments, and gabions.

The shoreline stabilization activity is proposed to take place along with the removal of the existing deteriorated structures from when the site was previously used as an oyster processing facility. This includes existing concrete and rubble debris that was previously used to stabilize the shoreline as well as deteriorated pilings and a dock. The applicant is proposing to stabilize the shoreline in three separate areas by installing 190 linear feet of riprap revetment along a highly eroding vertical bank, 145 linear feet of riprap revetment and to repair by replacement 76 linear feet of bulkhead. Commenters expressed concern about how the construction of the shoreline stabilization will affect their shorelines. A shoreline is a dynamic system resulting in erosion and accretion of sediments by natural coastal processes such as wind, waves, storm energy as well as by man-made impacts such as shoreline stabilization. The construction of a riprap revetment is a preferred method of shoreline stabilization to avoid adverse environmental effects because it will dissipate wave energy by absorbing it. In addition, the revetment is proposed to be underlain with geotextile fabric which prevents the transfer of sediments and will be composed of quarry stone rather than the existing fragments of debris. The proposed work is

considered to be an improvement when compared to the existing conditions of the shoreline. The replacement of the bulkhead is discussed below in Section 4.10.1.4.

4.10.1.4 Vertical-walled structures shall be allowed only where a non-vertical structure, designed to equal standards, would be ineffective to control erosion, where deleterious environmental effects associated with the construction of vertical structures would be less than the impacts on the adjacent environment during construction of a non-vertical structure, where functionally, no practical alternatives exist for certain water-dependent facilities or activities, or where generally accepted engineering practices would preclude the use of non-vertical walled structures.

The site has a small landing area stabilized with an existing timber crib structure backfilled with earth. This landing area is proposed to be an alternate access point to the dock which the applicant wishes to retain. Since this crib structure was in existence prior to the Regulations Governing the Use of Subaqueous Lands, it is considered to be grandfathered and can be replaced in-kind. The applicant has proposed to repair the 76 linear feet of bulkhead by replacement in the existing footprint. This is the preferred method of replacement rather than the practice of stepping out immediately in front of the existing wall to install a new bulkhead.

4.11.3 Water Quality on Dredging Projects

4.11.3.1 - All dredging is to be conducted in a manner consistent with sound conservation and water pollution control practices. Spoil and fill areas are to be properly diked to contain the dredged material and prevent its entrance into any surface water. Specific requirements for spoils retention may be specified by the Department in the approval, permit or license.

The applicant has been adaptable to develop alternatives that follow conservation and water pollution control practices during the dredge in-water activity as well as the spoil dewatering process. As discussed above, the applicant developed alternate methods of dredging either by an excavator on uplands or mounted on a barge in order to preserve the existing mature trees on the site.

During the DNREC Groundwater Protection Branch's review of the initially proposed dredge disposal location, it was discovered that the location was on a brownfield site. The applicant decided to minimize the potential for adverse impacts by finding an alternate dredge disposal location. Disposal of the dredged material was then proposed to be transported via water-tight dump truck to a previously approved borrow pit disposal area located northeast of the intersection of Irons Lane and Old Mill Road at Tax Parcel# 134-7.00-187.00, Dagsboro, DE. At that time, the DNREC Groundwater Protection Branch did an additional review of the new proposed disposal location and found no concerns. The proposed activities are to be implemented in accordance with sound water pollution control practices and DNREC's Surface Water Quality Standards in order to minimize impacts to the environment.

REGULATORY REVIEW – MARINA REGULATIONS

The following review evaluates the proposed project with respect to the requirements of the Marina Regulations. The Regulations provide the criteria for evaluating marinas that are

proposed to be constructed in subaqueous lands. The burden is on the applicant to prove to the Department that the requirements of these Regulations have been met; and if the granting of a permit will result in loss to the public of a substantial resource, or that the loss has been offset or mitigated. The Department's regulatory evaluation and the public comments received are addressed according to the pertinent sections of the Regulations as follows.

4.3.2.4 Public Notice

4.3.2.4.1 Advertise receipt of the application in two (2) newspapers of statewide circulation.

As required, the project was advertised on May 30, 2018 and the public hearing was advertised on April 17, 2019 in two newspapers of statewide circulation. As a courtesy, the WSLs also sends direct mailings of the project description to property owners within a 1,000 foot radius of the project. After receipt of the WSLs advertisements, there were some commenters who voiced that there was a lack of opportunity for public input when DNREC Site Investigation and Restoration Section (SIRS) conducted their review. However, SIRS did procedurally follow their public notice requirements by advertisement of the Amended Proposed Plan for the Oyster House Village site on October 3, 2018. There were no comments or questions from the public regarding the plan and SIRS subsequently approved the Amended Final Plan of Remedial Action for the Oyster House Village Site on April 10, 2019. The remediation work consists of: 1) Placement of the cap in the South Area; 2) Submittal of a Remedial Action Work Plan (RAWP) for the North Area to remove buried organic debris and relocation on-site or disposal off-site of any surface organic debris; 3) Placement of an environmental covenant limiting land disturbing activities, limiting groundwater withdrawal, compliance with a contaminated material management plan (CMMP) and Long-term Stewardship (LTS) Plan; 4) Preparation of a CMMP for new construction or soil disturbing activities; 5) Development of a DNREC approved Long-Term Stewardship (LTS) Plan to monitor the cap. The WSLs courtesy of providing the adjacent property owners direct mailings is not a regulatory requirement and therefore is not a lack of public transparency on SIRS part.

Section 11.0 Requirements for Siting and Designing New Marinas - This section describes the requirements, restrictions, and limitation criteria for new marina development....New marina applications must include a Siting and Design Study that demonstrates how the proposed marina meets the criteria of this section.

Permitting requirements for the Siting and Design (S&D) Study for new minor marinas (25 slips and less) are modified in order to reduce environmental impacts by encouraging consolidation of vessel docking facilities. An S&D Study with associated documentation was submitted as part of the marina application.

11.3 Environmental siting considerations

The S&D Study explored environmental siting considerations as required. The consultant submitted historic water quality data representative of on-site conditions obtained from the Delaware Environmental Monitoring and Analysis Center (DEMAC). The station (Station 305011) is located at the State Rt. 1 Bridge just 700 feet north of the project site area. Based on data collected between 2000 and 2016, dissolved oxygen (DO) concentrations showed a low average of 4.41 mg/l which is considered a healthy standard for DO levels in the area. In addition, water quality conditions are expected to improve with the recent elimination of the Rehoboth Beach Wastewater Treatment Plant from discharging treated effluent to the Lewes and

Rehoboth Canal. The water quality data also included information regarding fecal coliform concentrations but the Canal is already designated as prohibited shellfish harvesting waters. In addition, State-regulated wetlands and submerged aquatic vegetation are not present at the marina site. The fringe of emergent wetlands located along portions of the shoreline is not under WSLs jurisdiction but would be addressed by the U. S. Army Corps of Engineers permitting process. Also included was a review from the U. S. Fish and Wildlife Service, DNREC Division of Fish and Wildlife and the Delaware Office of Historical and Cultural Affairs indicating that the construction of the marina will not impact any historical or cultural resources, threatened species, endangered species, or their critical habitats. A commenter was concerned that there was no review completed by National Marine Fisheries Service (NMFS). However, a review by NMFS is triggered when Section 7 consultation is required. The review by the U. S. Fish and Wildlife Service found no impacts to threatened, endangered or candidate species of the Endangered Species Act and therefore Section 7 consultation was not required. Based on the DNREC Fish and Wildlife review, specific time of year restrictions for the construction activity were implemented as a special condition of the draft authorizations for the species of concern.

11.4 Planning and design requirements

The S&D Study also explored planning and design siting considerations as required. The marina is to be located on the open waters of the Lewes and Rehoboth Canal which makes it optimal for maximum flushing. A minor amount of material was requested to be dredged along the eroded shoreline bank. Adequate depths exist without the need for substantial dredging even on a long term basis. As discussed in detail in Section 4.10 above, remediation of the shoreline is proposed to take place on the site. The applicant addressed the daily operations of the marina by submitting an Operations and Maintenance Plan for approval.

11.4.5 Vessel Traffic and Navigation

11.4.5.1 - Marinas shall be designed to minimize adverse effects on the existing public and private use of waters of the State. This includes applications for mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, that may cause the use of State waters to be restricted.

As discussed in Section 4.6.3 above, the Lewes and Rehoboth Canal is a publically used federal navigational channel and the waterfrontage is largely developed for commercial and residential land use. A no wake zone is currently implemented along the Canal where the marina is proposed to be sited. Although the public voiced concerns that the no wake zone is constantly violated by speeding boaters, the management of vessel speed is under the jurisdiction of the DNREC Fish & Wildlife Natural Resources Police. Other commenters stated that the waterbody is already congested with boat traffic. However, the Lewes and Rehoboth Canal is not readily used as a recreational area but rather as a traveling lane to other destinations from the Delaware Bay to the Inland Bays. So the creation of the marina will not inherently reduce the potential acreage for the recreational use of the Canal itself but instead will take advantage of the shoreline for water access to other destinations.

Section 14.0 Marina Operation and Maintenance (O&M) Plan

14.2 Marina operations and maintenance (O&M) plan. This section of the Regulations presents the requirements for obtaining a marina operations and maintenance (O&M)

plan. It applies to all marinas in the State of Delaware, whether existing, under construction, or proposed.

A draft O&M plan was submitted as part of the marina application. The O&M Plan addressed compliance to statutory requirements by including information on the marina layout, the disposal of waste material, emergency operations, rules and regulations for marina users, among other items.

There were several concerns expressed by commenters on the operation of the marina. One concern was with the requirement to have secured a contract for a berth area prior to utilizing the dock. The commenter believed this would open the marina up for public use and yet there is no parking available for them on the United States property. The O&M Plan's requirement for contracts for usage of berthing areas is intended as a management tool for slips and would be limited to the residents of Oyster House Village. This practice would manage slip availability since there are fewer slips in comparison to the number of single-family homes. Residents are to use the parking located on the community development property in order to access the marina. In applying for the license agreement from USACE, only the marina docking facility is intended for the private use of the residents of Oyster House Village. Parking was not proposed on the United States property in order to minimize impacts and allow the public continued access to the upland site. The provisional permit from the U.S. Army Corps of Engineers includes a special condition which requires that the general public be allowed access on and through the government lands.

Additional concerns was in reference to no parking being available for the use of the unimproved boat ramp on the United States property and concerns with trailered vessels driving through their community or parking on others' property for access to it. As mentioned previously, the unimproved boat ramp is not a part of the marina and therefore it is not the applicant's responsibility to provide parking for its use. The unimproved boat ramp has historically been in existence and utilized by the general public. Since no structure is associated with the unimproved boat ramp, there would be no previous permitting history and therefore no entity has any responsibility toward the operation or maintenance of this un-vegetated water access point.

Another commenter was concerned that there were no restroom facilities provided at the marina site. As described in the O&M Plan, marina users are to use the restroom facilities at their homes or the community clubhouse. The distance from the marina to the community property is approximately 110 feet which allows for convenient access to restroom facilities.

Regarding the disposal of vessel sewage waste, a commenter was concerned that since a portable marine pumpout is to be provided, there would be the potential for the inadvertent discharge of sewage waste into the Canal. Included in the O&M Plan and on dock signage are the procedures for the use and maintenance of the pumpout station. The O&M Plan also states that community dock tenants would be trained by the Harbormaster on the use of the sewage pumpout system. Additionally, the O&M Plan advises dock tenants of the penalties for non-compliance to the proper disposal of sewage waste. Providing convenient access to a pumpout is viewed positively by the WSLs since it deters boaters from directly discharging waste in Delaware waters.

After having already observed improvements in the water quality with the elimination of the Rehoboth Beach Wastewater Treatment Plant discharging treated effluent to the Lewes and Rehoboth Canal, a commenter had concerns with the potential for discharge of motor fuel during the operations of the marina. While the marina does not provide fueling facilities, dock tenants are able to fuel their vessels using handheld containers. The O&M Plan advises best management practices when fueling such as by using approved fueling containers and using oil absorbent pads to capture backsplash and vent line overflow when fueling. In the event of a spill, the O&M Plan outlines the boater responsibilities and reporting requirements. This includes the use of the spill containment kits and containment booms located in the storage building adjacent to the community dock.

A commenter pointed out a contradiction in the disposal of waste. One section of the O&M Plan states there will be a dock trash dumpster while another required residents to dispose of waste at their own private trash receptacles. However, this was a typographical error from the use of a template. The final O&M Plan will clarify that the marina handles waste as a carry-in carry-out facility and dock tenants are to use their own private trash receptacles or recycle as appropriate.

The O&M Plan also discusses the marina use by the DNREC Shoreline and Waterway Management dredge operation compound. Since the DNREC Shoreline and Waterway Management compound is currently in existence and holds a license agreement from the U.S. Army Corps of Engineers (USACE) to stage their dredge operations on the property, the applicant has requested for their relocation on the site in order to construct and operate the marina. Although after the initial application modification, the limits of the DNREC compound remained only slightly adjusted from their current occupation; their license agreement with the USACE is required to be updated. Due to the inconvenience, the applicant has offered use of the docking facility during the fall/winter dredge season. Docking and dock uses would be conducted in accordance with the signed memorandum of agreement between the applicant and DNREC. The agreement specifies that the southern 125 foot section of the dock adjacent to the fenced compound area would be utilized for the staging of dredge operations from September 10th to March 31st of any calendar year. The O&M Plan for the community marina also states that no boat docking will be permitted on the southern 125 foot section of the dock during that time. In addition, a gravel access drive is to be constructed on the United States property for DNREC access to the fenced compound. Since certain regulatory approvals need to be acquired before the DNREC Shoreline and Waterway Section can apply for the modified license agreement from the USACE, a special condition is included in the draft authorizations to submit the executed memorandum of agreement between both parties.

Pending associated subaqueous and marina authorizations for the construction activity, the O&M plan will be authorized for approval and must be re-submitted for periodic re-approved every four years.

CONCLUSION

In reviewing the applicable statutes, regulations, and weighing public benefits against detriments, the WSLs finds that the construction of the docking facility, maintenance dredging, shoreline stabilization and stormwater outfalls as described in the application for the Marina Permit,

Subaqueous Lands Permit and Water Quality Certification by Sunrise Ventures, LLC complies with the Regulations administered by the WSLS. The applicant has applied for one structure to serve the entire community which the WSLS views positively since it is a reduction of an overall environmental impact in comparison to the construction of multiple structures for single-family homes. In addition, public use impacts have been minimized since the applicant has requested 20 slips for a community composed of 30 single-family homes. Furthermore, no portion of the proposed docking facility will encroach within the 10 foot wide buffer of the 55 foot wide federal navigational channel. Minor maintenance dredging along the shoreline bank has been requested in association with a canal once dredged by the U.S. Army Corps of Engineers. Adequate water depths should be sustained without the need for frequent dredging events. Additionally, the proposed shoreline stabilization activities are an improvement to the current deteriorated site conditions. The Lewes and Rehoboth Canal is a federally maintained navigational channel predominately used as a travel lane from the Delaware Bay to the Inland Bays so potential water use conflicts are deemed minimal.

Through agency consultation, alternatives were developed by the applicant in order to minimize impacts. Several modifications were made to the initial application to include: a reduction in the length of the dock by 48 linear feet; a reduction in the length of riprap revetment by 135 linear feet; revising their original proposed relocation of the DNREC dredge operation compound to allow continued public use of the unimproved boat ramp and the relocation of the dredge disposal location in order to eliminate concerns associated with the brownfield site.

The proposed marina has minimized potential sources of contamination by providing a sewage pumpout system, by not providing fueling facilities, and by not allowing major vessel maintenance work to be done on the grounds of the marina. Additionally, the submitted Operations and Maintenance (O&M) Plan for the marina has rules and regulations for boat tenants which contain best management practices and tips. This includes ways to control oil in the bilge, management of vessel sewage disposal, trash and recycling. Also included, are emergency procedures and the safety precautions implemented during hurricanes and severe weather events.

In order to ensure public concerns are addressed, the WSLS has included a special condition in the draft authorizations which requires that the unimproved boat ramp remain unobstructed for public use. In addition, due to simultaneously permitting processes, a special condition is included in the draft authorizations to submit an executed license agreement from the Real Estate Division of the Baltimore District of the U.S. Army Corps of Engineers authorizing the construction and operation of the marina.

In the event the Secretary determines that this project should be approved, included are draft authorizations with appropriate conditions for consideration.

Enclosures: DNREC, Division of Fish and Wildlife, Species Conservation and Research Program Review
DNREC, Groundwater Protection Branch Review
Initial Proffered Provisional Permit from U. S. Army Corps of Engineers

Species Conservation and Research Program
Delaware Division of Fish and Wildlife
Department of Natural Resources and Environmental Control
4876 Hay Point Landing Rd
Smyrna, Delaware 19977
(302) 735-8651

Requested By: June 19, 2018
Submitted: August 6, 2018

Ms. Gayle Calder
Wetlands and Subaqueous Lands Section
89 Kings Highway
Dover, Delaware 19901

RE: Public Notice #11

Subaqueous Lands Permit Application

Joyce Branda and Stanley Reed (1-34-13.00-1402.00) - To construct a 4 by 20 foot long pier and a 5 by 20 foot long dock in the Salt Pond at 427 Canal Way East, Bethany Beach, Sussex County, DE

Wetlands issued without DFW comment.

Allie Marie Cannon Heirs (5-33-2.00-20.00) - To repair and/or reconstruct 3,970 linear feet of rip-rap in the Little Assawoman Bay at 38876 Bennett Avenue, Selbyville, Sussex County, DE

A review of our database indicates that there are currently no records of state-rare or federally listed plants, animals or natural communities at this project site.

Kevin Ruppert (3-34-19.00-907.00) - To remove an existing pier and boatlift and construct a 6 by 40 foot long linear dock, a boatlift with 4 associated pilings, a 5 by 30 foot long dock, and a 6 by 8 foot long floating dock, in Bald Eagle Canal at 113 Kingsbridge Road, Rehoboth Beach Yacht and Country Club, Rehoboth Beach, Sussex County, DE

Wetlands issued without DFW comment.

Gary Everett (334-22.00-14.00) – To install a 3 by 10 foot long gangway and a 6 by 18 foot long floating dock at 10 Marshall Road, Old Landing, Rehoboth Beach, Sussex County, DE

Wetlands issued without DFW comment.

City of Seaford (531-13.00-35.00 & 531-13.00-36.00) - To convert a rip-rap revetment into a rip-rap sill by altering and installing approximately 125 cubic yards of rip-rap, excavating approximately 161 cubic yards of soil landward of the rip-rap sill, and to create approximately 6,000 square feet of wetlands landward of the rip-rap sill in the Nanticoke River adjacent to the Seaford Boat Ramp on Nanticoke Avenue, Seaford, Sussex County, DE

Sturgeon

The occurrence of Atlantic Sturgeon (*Acipenser oxyrinchus*) in the Nanticoke River watershed has been confirmed. This species is listed as endangered under the U.S. Endangered Species Act. Data collected through sampling efforts and acoustic telemetry suggest this species is likely inhabiting the river system from approximately August 15th through November 1st. A time of year restriction for all in water project activities during this time is recommended to avoid impacts to this species. Note that Section 7 consultation may be required.

Other Anadromous fish

In-water work should not take place between March 15 to June 1 to minimize impacts to anadromous fish species that utilize the river during upstream migration. Specifically, American shad (*Alosa sapidissima*), blueback herring (*Alosa aestivalis*), and alewife (*Alosa pseudoharengus*) collectively known as alosines, utilize the river during spawning and then as a nursery habitat for young-of-the-year. Alosines are very sensitive to changes in their natural environment and noise and other disturbances transmitted into the water column has the potential to interrupt upstream migration. Habitat degradation is one factor leading to a decline in the populations of these species. American shad numbers have indicated serious declines along the East Coast and is a species currently undergoing restoration efforts on the Nanticoke River. Alewife (*Alosa pseudoharengus*) and blueback herring (*Alosa aestivalis*), often collectively referred to as 'river herring', are listed by the National Marine Fisheries Service as a Species of Concern^[1]. In addition, these species are important to both commercial and recreational fisheries and form an important forage base for other fish and animal species. Other migratory species such as striped bass spawn in the Nanticoke River in the spring as well.

Largemouth Bass

Largemouth Bass *Micropterus salmoides* are the most sought gamefish by freshwater anglers in Delaware and the Nanticoke River has been the most popular bass fishing tournament location for the past 22 years. Minimizing impacts to the Nanticoke River bass population is extremely important given the variable environmental conditions coupled with heavy fishing pressure. Habitat within the project area is not likely optimal for spawning or as a nursery area, however, the extensive area of spatterdock directly across the river from the project area is utilized as a nursery area for young-of-year Largemouth Bass. Turbidity is one factor that impacts growth and survival, therefore, efforts to contain sedimentation during project activities is requested. In addition, although this area of the shoreline is already somewhat developed, efforts should still be made as feasible to minimize the conversion of natural shoreline to rip-rap or other hard materials. Cumulative impacts of shoreline habitat loss are hard to quantify but should be considered. The alteration of shoreline habitat can affect the distribution of benthic and macro-invertebrates which serve as the forage base for many fish species, directly impact species that utilize shoreline vegetation for spawning, and remove cover that is integral to young-of-year fish for evading predation.

Mussels

The Nanticoke River watershed is the most diverse in the State with regard to freshwater mussels. Because freshwater mussels are filter feeders, and have a long lifespan and complex life cycle, they often serve as excellent indicators of water quality. Impacts to this population of freshwater mussels can be minimized by taking measures to decrease downstream sedimentation during construction activities.

^[1] **Species of Concern** are those species about which NOAA's National Marine Fisheries Service (NMFS) has some concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the Endangered Species Act (ESA).

Plants

Our plant biologist would like an opportunity to review the species names of plants to be used with this project. Mr. McAvoy can be reached at 302-735-8668 or William.McAvoy@state.de.us.

Keith L. Roughton and Anita Roughton (1-34-6.00-279.00) - To construct a 3 by 31 foot long pier in Stump Creek at 107 Seawinds Drive, Dagsboro, Sussex County, DE

Wetlands issued without DFW comment.

Dawn A. DuPre and Megan E. DuPre-Keating (3-34-19.00-1011.00)- To install a 5 by 10 foot long floating dock against the bulkhead, two (2) 5 by 14 foot long floating PWC docks and a 3.5 by 15 foot long floating pier in an unnamed lagoon at 2 Sherborne Road, Rehoboth Beach Yacht and Country Club, Rehoboth Beach, Sussex County, DE

Wetlands issued without DFW comment.

Subaqueous Lands Permit and Wetlands Application

Zachary Alexander (1-34-13.19-283.00 and 284.00) - To construct a 3 by 55 foot long wetland walkway, a 4 by 5 foot long pier, and a 5 by 25 foot long dock in Bethany Loop Canal at 430 Wiegand Lane, Bethany Beach, Sussex County, DE

Wetlands issued without DFW comment.

James Dillard (1-34-6.00-267.00) - To remove an existing dock and pier and construct a 3 by 27 foot long wetland walkway, a 3 by 18 foot long pier, a 8 foot long section of pier flaring from 3 to 5 feet wide, and a 6 by 24 foot long dock in a lagoon adjacent to Vines Creek at 32166 Linn Woods Lane, Linn Woods, Dagsboro, Sussex County, DE

Wetlands issued without DFW comment.

Subaqueous Lands Lease Renewal Application

Anthony Massetti (234-12.00-140.00) - To renew a lease to maintain a 4 by 31.5 foot long pier and a 5.5 by 15.5 foot long dock in the Rehoboth Bay at 34879 Bookhammer Landing Road, Joy Beach, Lewes, Sussex County, DE

Wetlands issued without DFW comment.

Subaqueous Lands Lease Application

Chesapeake Utilities Corporation (adjacent to 234-7.00-107.00) - To install an 8-inch, 700 foot long natural gas pipeline using directional boring under Love adjacent to 202 John J. Williams Highway in Lewes, Sussex County, DE

Typically we ask for frac-out plans with these projects (see below), which wasn't included in the tidewater comments. However, wetlands issued without DFW comment.

A frac-out contingency plan should be in place prior to the start of project activities. The contingency plan should include the following:

- 1) A provision to contain materials released,
- 2) A clean-up protocol, and
- 3) Arrangements for an experienced representative (drilling crew or consultant) to watch the site at all times so that the operation can be shut down immediately in the event a frac-out occurs.

The onsite crew should have access to the DNREC 24 hour hotline phone number (1800-662-8802) to report any environmental release or fish kill. Immediate notification of any environmental release is imperative. Please also follow-up with a contact to Bruce Cole, DFW Environmental Scientist (302-735-2961 or Bruce.Cole@sate.de.us).

Wetlands Application

DNREC Coastal Programs (2-00-10500-1000-00001) – To install (5), 0.8-inch by 3-foot long redox sensors and (3), 1-inch by 4-foot long PVC research wells, to replace (1), 3-inch by 4-foot long PVC research well and to collect (30), 1-ounce sediment samples to a depth of 4-inches from State-regulated wetlands at the St. Jones Reserve at 818 Kitts Hummock Road, Dover, Kent County, DE

Marsh Nesting Birds

If feasible, it would be best for the work is completed before April 1 or after July 31 and if that is not possible, the next best option would be before June 1 and after July 31. However, since the proposed activity is minimally invasive and we are aware that field staff know to attempt to minimize disturbances, we can waive these marsh nesting bird time of year restrictions. We do ask that, *where feasible*, any sampling sites that end up being located in an area that is disturbing to a nesting bird (defined by causing a bird to call or flush) be relocated to less disturbing locations.

Subaqueous Lands Permit, Water Quality and Marina Permit Application

Delaware Division of Fish and Wildlife (1-33-16.00-172.00 & 2-34-32.00-7.00) - To remove an existing boat ramp and to construct a 16 by 40 foot long concrete boat ramp, a 6 by 60 foot long dock, to fill approximately 0.061 acres of subaqueous lands, to install 174 linear feet of steel sheet piling to contain the fill for an expanded parking facility and to offset the impacts by managing invasive species to promote native wetland growth along Gravel Hill Road, in Millsboro Pond, Millsboro, Sussex County, DE

In accordance with the Division of Fish and Wildlife's Public Pond Policy, a time of year restriction of April 1-July 15 is recommended to protect sunfish which utilize shallow and nearshore habitat for spawning activities. Note that seine surveys conducted at the boat ramp and adjacent shoreline in 2017 revealed the presence of young of year Centrarchids.

In the event the weather delays prevent the project from being completed prior to April 1, the project can move forward *if* the coffer dam is put in place prior to April 1; if the dam is placed prior to April 1, it is likely that it will prevent fish from entering the project area to begin nest building. Additionally, if the dam is placed prior to April 1, then it can be removed any time for the same reason. However, it is recommended that sedimentation be kept to a minimum and the equipment used to remove the dam works within the smallest footprint possible.

Millsboro Pond is one of the most popular largemouth bass tournament sites in the state. As such, we also ask that the applicant contact Edna Stetzar (Edna.Stetzar@state.de.us or 302-735-8654) with the

approximate dates that the ramp/parking area will be closed (once dates have been determined) so that this information can be relayed to the 50+ bass clubs that use the pond.

Populations of two state-rare fishes, fourspine stickleback (*Apeltes quadracus*) and Ironcolor shiner (*Notropis chalybaeus*) were observed in Millsboro Pond during surveys conducted in 1971 and 1953, respectively. Subsequent surveys have not been conducted to determine if these species still persist, although the Division of Fish and Wildlife has seined in the area of the boat ramp as recently as this summer, and these species were not encountered. Fourspine stickleback are dependent on calm, shallow, heavily vegetated waters for spawning, whereas ironcolor shiner use sandy substrate in clear, well vegetated water. Alewife floater (*Anodonta imbecilis*), a state-rare mussel species, has also been documented in this pond system.

If habitat conditions have remained relatively stable, populations of these state-rare species may still persist in the pond. However, the boat ramp area is highly disturbed by people frequently power loading their boats, and the site is characterized by dense invasive hydrilla. As such, it is not likely these species utilize habitats near the project area. However, efforts should be made to decrease sedimentation during project activities.

Subaqueous Lands Permit, Water Quality, Marina and O&M Application

Oyster House Village DE, LLC (334-19.00-173.00 & 334-19.08-42.00) To construct a new 20 slip minor marina by installing a 6 foot wide by 13 foot long section of access pier, a 6 foot wide by 4 foot long section of access pier, a 6 foot wide by 3 foot long kayak launch ladder and a 6 foot wide by 520 foot long dock; to repair by replace 76 linear feet of bulkhead, to stabilize the shoreline by installing 470 linear feet of riprap revetment and to mechanically maintenance dredge 300± cubic yards to a depth ranging from -0.8 feet to -3.5 feet MLW in the Lewes and Rehoboth Canal, located south of the intersection of Kaitlyn Drive and Oyster House Road and to dispose of the dredged material via off-loading from a barge located west of Oyster House Road to Tax Parcel# 334-19.08-42.00, Rehoboth Beach, Sussex County, DE

We'd like to recommend a time of year restriction of March 1 – September 30 to protect summer flounder given the dredging and pile driving associated with the project.

Molina, Julie (DNREC)

From: Bataille, Amber C. (DNREC)
Sent: Monday, July 29, 2019 8:46 AM
To: Molina, Julie (DNREC)
Cc: Grabowski, Matthew T. (DNREC)
Subject: RE: OHV DE, LLC Dredge Spoil Review

Follow Up Flag: Follow up
Flag Status: Flagged

Switch-MessageId: 133c10fab99544fcb08b75de8fdcf685

The GPB has completed a limited hydrological review for the below project. The GPB previously reviewed the spoils for this site. The spoils were initially proposed to be placed onsite where an active SIRS remediation was taking place due to buried mulch producing methane. The applicant has proposed to move the dredge spoils to a barrow pit located on parcel 134-7.00-187.00.

Spoils have been previously placed on the proposed parcel over the past 5 years. The site is inland with domestic wells in the area. The concern is that salt water from the dewatering spoils may impact groundwater and wells in the area. The GPB has previously contacted the pit owner, Mr. David Banks, to perform a site visit and measure conductivity in the pit pond. At the time of the site visit in October 2018, water in the pond was not showing indicators of degradation from the previously stored spoils.

Based on the above information, the GPB does not have concerns from the proposed dredge spoils being stored at the proposed burrow pit location.

Please contact me with questions,

Amber Bataille, P.G.

Hydrologist III
Division of Water
Dept. of Natural Resources & Environmental Control
89 Kings Highway
Dover, Delaware 19901
Phone: (302) 739-9945
Fax: (302) 739-2296
Amber.Bataille@delaware.gov

Please note: My email address has changed. My new email address is Amber.Bataille@delaware.gov.

From: Molina, Julie (DNREC) <Julie.Molina@delaware.gov>
Sent: Wednesday, May 01, 2019 5:13 PM
To: Bataille, Amber C. (DNREC) <Amber.Bataille@delaware.gov>
Cc: Grabowski, Matthew T. (DNREC) <Matthew.Grabowski@delaware.gov>
Subject: FW: OHV DE, LLC Dredge Spoil Review

Amber,

An applicant (formerly Oyster House Village (OHV) and now Sunrise Ventures, LLC) has decided to relocate the disposal site for a project you previously reviewed. This project has not been issued yet since a public hearing will be held on May 28th.

Based on your previous review, the applicant assumed that the dredged spoils do not have to be sampled since they have relocated them off of the SIRS site. Can you clarify if this is still required?

I have attached the updated application so you can review the new disposal location. The mapped location is on page 39 and 40 of the document. I have also included the updated project specifics below.

Sunrise Ventures, LLC proposes to construct a new 20 slip minor marina by installing a 6 foot wide by 13 foot long section of access pier, a 6 foot wide by 4 foot long section of access pier, a 6 foot wide by 434 foot long section of dock with a 38 foot long section constructed over uplands (for a total dock length of 472 linear feet) and a 6 foot wide by 7 foot long kayak launch ladder; to stabilize the shoreline in separate areas by installing 190 linear foot of riprap revetment, 145 linear foot of riprap revetment and to repair by replacement of 76 linear feet of bulkhead; to construct two (2) Stormwater outfall aprons portions protruding from the riprap revetment composed of a total of 5 cubic yards of riprap; to mechanically maintenance dredge 265± cubic yards to a depth ranging from -0.8 feet to -3.5 feet MLW in the Lewes and Rehoboth Canal, located south of the intersection of Kaitlyn Drive and Oyster House Road, Rehoboth Beach, Sussex County, DE and to dispose of the dredged material via off-loading from a barge and then trucked to a previously approved borrow pit 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, DE

Thank You,

Julie R. Molina

From: Bataille, Amber C. (DNREC)

Sent: Friday, September 28, 2018 9:58 AM

To: Molina, Julie (DNREC)

Cc: Grabowski, Matthew T. (DNREC); Galloway, Rick (DNREC); Smailier, Steven M. (DNREC)

Subject: OHV DE, LLC Dredge Spoil Review

The Groundwater Protection Branch (GPB) has completed a limited hydrological review for a proposed maintenance dredging project on Tax Map Parcel 334-19.08-42.00, owned by OHV DE, LLC. The project proposes to place ~300 cubic yards of mostly sand and gravel from the Lewes-Rehoboth Canal on the parcel and cover with a topsoil cap.

Public water is available in the area served by Tidewater or City of Rehoboth.

There are a series of monitoring wells located on site and adjacent parcels associated with the Oyster House Villas II Site Investigation Remediation Section (SIRS) site. The project id for the site is DE-1573. According to SIRS, methane remediation is actively taking place on the site due to a buried mulch pile. The application proposes to place the spoils on the SIRS site. SIRS is concerned that high organics in the dredge spoils may cause additional methane formation and the spoils need to meet the appropriate HSCA soil reuse standards.

Based on DGS water table mapping, groundwater flow appears to flow to the south. It is likely that the Lewes-Rehoboth Canal will act as a hydrologic boundary and shallow/local groundwater will move towards the Canal.

The GPB at the request of SIRS, requests the spoils either be moved to another location with the site being reviewed by the GPB or sample the spoils to determine if placement onsite is possible. Spoils shall be sampled for grain size, organic content, and the HSCA soil reuse policy using EPA Methods 8260 (VOCs), 8270 (SVOCs), 6010 (metals), and 680 (PCBs). The HSCA soil reuse policy can be found at

<http://www.dnrec.delaware.gov/dwhs/SIRB/Documents/SoilReusePolicy.pdf>. Based on the policy, one- 30 point composite sample would be appropriate for SVOCs, metals and PCBs, and 5 discrete samples for VOCs for this project. Results should be submitted and jointly reviewed by the GPB and SIRS. Additional questions regarding the sampling can be directed to the SIRS Project Manager, Rick Galloway at Rick.Galloway@state.de.us.

Please contact me with questions.

Amber Bataille, P.G.

Hydrologist III

Division of Water

Dept. of Natural Resources & Environmental Control

89 Kings Highway

Dover, Delaware 19901

Phone: (302) 739-9945

Fax: (302) 739-2296

amber.bataille@state.de.us



REPLY TO
ATTENTION OF



SCANNED

DEPARTMENT OF THE ARMY
PHILADELPHIA DISTRICT CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

807#696
OHV

MAY 28 2019

SUBJECT: CENAP-OP-R-2018-00746-85 (Initial Proffered Provisional Permit)
Project Name: Oyster House Village Dock Lewes and Rehoboth Canal SX
Location: Latitude 38.706059°N, Longitude 75.093696°W

Keith Delaney
OHV DE, LLC
34 East Germantown Pike, Suite #203
Norristown, Pennsylvania 19401

RECEIVED MAY 31 2019

Dear Mr. Delaney:

We have completed our review of your permit application, identified as CENAP-OP-R-2018-00746, in which you propose to permanently remove remnants of a deteriorated dock structure and construct one (1) 472.0-foot long by 6.0-foot wide community dock with one (1) 17.0-foot long by 6.0-foot wide access pier; mechanically dredge approximately 263.0-cubic yards of bottom sediments from 8,064.0-square feet of the Lewes and Rehoboth Canal associated with the dock to -3.5-feet NAVD88 with disposal at an active upland borrow pit site located at tax map parcel 134-7.00-187.00 in Dagsboro, Sussex County, Delaware; stabilize approximately 335.0-linear feet of shoreline via placement of rip-rap stone revetment; and the installation of 2 stormwater outfall structures. The project is located at the Lewes and Rehoboth Canal, in Rehoboth, Sussex County, Delaware, Tax Map Parcel 334-19.00-173.00.

Enclosed are the original and one (1) copy of the Initial Proffered "Provisional Permit" (**Enclosures 1 and 2**). The provisional permit is **NOT VALID** and does not authorize you to perform any work. The provisional permit describes the work that will be authorized, and the General and Special Conditions that will be included in your final Department of the Army (DA) permit if the Delaware Department of Natural Resources and Environmental Control (DDNREC) Water Quality Certification (WQC) and/or Coastal Zone Management (CZM) consistency requirements are satisfied as described below. No work shall be performed within the area of Federal jurisdiction until you have received a validated copy of the DA permit.

By Federal law a DA permit can not be issued until a State Section 401 WQC has been issued or waived, and/or the State has concurred with a permit applicant's CZM consistency certification or concurrence has been presumed. As of this date, the DDNREC has not issued a Section 401 WQC for your proposed work. If the DDNREC fails or refuses to act within 160 days of the date of their receipt of a complete application, the Section 401 WQC will be considered waived, unless the District Engineer determines a longer period is reasonable for the State to act. Also, as of this date, the DDNREC has not concurred with your CZM consistency certification. If the State fails to concur or object to your certification statement within 180 days of the Agency's receipt of a complete application, then concurrence with your CZM consistency certification will be presumed.

Conditions of the State Section 401 WQC and/or the State CZM concurrence will become conditions to the final DA permit. Should the State's action on the required certification or concurrence preclude validation of the provisional permit in its current form, a modification to the provisional permit may be required and you will be notified as appropriate. Substantial changes may require a new permit evaluation process, including issuance of a new Public Notice.

Once the State has issued the required Section 401 WQC and/or concurred with your CZM consistency certification, or the above referenced waiver time periods have elapsed, you should review all conditions contained in the provisional permit and, if they are acceptable to you, sign both copies of the provisional permit and return them with the project plans to this office along with a check in the amount of \$100.00 made payable to FAO, USAED, Philadelphia District. All checks received from the public must have either the person's driver's license or Social Security Number written on the front of the check, at the top. If the payer is a business, a Social Security Number or the company's Federal Tax Identification Number should be used. For administrative purposes, it is requested that your check include the application number shown above.

Furthermore, if the State has issued the required Section 401 WQC and/or concurred with your CZM consistency certification, you must provide a copy to this office with the signed DA permit. In order for a waiver of WQC/CZM to transpire, you must provide this office with verification from the State indicating the date of their receipt of a complete application.

This letter contains an initial proffered permit for your activity. If you object to this permit decision because of certain terms and conditions therein, you may request that the permit be modified accordingly under Corps regulations at 33 CFR 331. Enclosed you will find a combined Notification of Appeal Process (NAP) and Request for Appeal (RFA) form (**Enclosure 3**). If you object to this permit decision, you must submit a completed RFA form to the Philadelphia District Office at:

Edward E. Bonner
Chief, Regulatory Branch
U.S. Army Corps of Engineers
Philadelphia District
ATTN: CENAP-OP-R
Wanamaker Building, 100 Penn Square East
Philadelphia, PA 19107-3390

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the District Office within **60 days** from the date of the Notification of Appeals. Should you decide to submit an RFA form, it must be received at the above address by

JUL 27 2019

It is not necessary to submit an RFA form to the District Office if you do not object to the permit decision in this letter.

The Philadelphia District of the USACE has also completed its review of your request to modify and/or occupy USACE-owned property at the Lewes and Rehoboth Canal pursuant to Section 14 of the Rivers and Harbors Act of 1899, 33 U.S.C. 408 (Section 408). This evaluation was performed in accordance with Engineer Circular (EC) 1165-2-220. Based upon this evaluation, the Philadelphia District is granting permission to modify and/or occupy the subject USACE-owned property subject to the requirements and conditions of the Section 408 Permission Decision Letter, which is located in "Enclosure A" of the Provisional Permit.

Importantly, we bring to your attention Special Condition #7 of the Provisional Permit: **"The permittee understands and agrees that no work shall be undertaken until the permittee has secured a signed Real Estate instrument from the Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB-REC, 2 Hopkins Plaza, Baltimore, Maryland, 21201, (410) 962-4944. All work shall be performed in accordance with the terms and conditions of said Real Estate instrument."** This Real Estate instrument is a separate document from the Provisional Permit, which the permittee must obtain from the Real Estate Division (CENAB-REC) of the Baltimore District, U.S. Army Corps of Engineers, prior to undertaking any work.

Your DA permit will not be valid until we have returned a copy to you bearing both your signature and the signature of the appropriate Corps official. A self-addressed envelope (**Enclosure 4**) is enclosed for your convenience. You will be furnished with the original copy of the permit after it is validated. Also enclosed is a pre-addressed postal card (**Enclosure 5**) soliciting your comments on the processing of your permit. Any comments, positive or otherwise, on the procedures, timeliness, fairness, etc., may be made on this card. You may forward your comment card along with the signed provisional permit in the pre-addressed envelope provided.

If the State denies the required Section 401 WQC and/or does not concur with your CZM consistency certification, you should notify this office immediately. If the State denies any of these approvals, your DA permit would be denied without prejudice. If you should subsequently obtain a Section 401 WQC and/or a CZM consistency certification concurrence, you should contact this office to determine how to proceed with your permit application.

If you have any questions concerning your State WQC and/or CZM consistency certification, please contact the DDNREC directly.

Additional information concerning this provisional permit may be obtained by writing to Edward E. Bonner at the above address, by emailing edward.e.bonner@usace.army.mil, or by calling (215) 656-6725.

Sincerely,



Kristen N. Dahle
Lieutenant Colonel, Corps of Engineers
District Commander

Enclosures:

- 1: Original Initial Proffered Provisional Permit
- 2: One Copy of Initial Proffered Provisional Permit
- 3: Notification of Appeal Process and Request for Appeal Form
- 4: Self-Addressed Envelope
- 5: Pre-Addressed Postal Card

Copies Furnished:

DDNREC, CZM

DDNREC, Wetlands and Subaqueous Lands (Dover, DE)

CENAP-OP-RD (Yost)

CENAB-REC (Homesley)

Edward M. Launay

Environmental Resources, Inc.

Post Office Box 169

Selbyville, Delaware 19975

PROVISIONAL PERMIT

NOT VALID

DO NOT BEGIN WORK

This PROVISIONAL PERMIT is NOT VALID until:

1. You obtain a Section 401 Water Quality Certification and/or Coastal Zone Management consistency determination concurrence from the Delaware Department of Natural Resources and Environmental Control.

2. You sign and return **BOTH** copies of the enclosed provisional permit with the State Section 401 Water Quality Certification and/or Coastal Zone Management consistency determination concurrence and the \$100.00 permit fee.

3. The Corps signs the permit and returns it to you.

Your permit is denied without prejudice if the State denies your Section 401 Water Quality Certification and/or does not concur with your Coastal Zone Management consistency determination.

PROVISIONAL PERMIT

NOT VALID

DO NOT BEGIN WORK

DEPARTMENT OF THE ARMY PERMIT

PERMITTEE AND PERMIT NUMBER:

PERMITTEE: OHV DE, LLC
CENAP-OP-R-2018-00746-85

ISSUING OFFICE:

Department of the Army
U.S. Army Corps of Engineers, Philadelphia District
Wanamaker Building - 100 Penn Square East
Philadelphia, Pennsylvania 19107-3390

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the Corps of Engineers having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

PROJECT DESCRIPTION:

Permanently remove remnants of a deteriorated dock structure and construct one (1) 472.0-foot long by 6.0-foot wide community dock with one (1) 17.0-foot long by 6.0-foot wide access pier. Mechanically dredge approximately 263.0-cubic yards of bottom sediments from 8,064.0-square feet of the Lewes and Rehoboth Canal associated with the dock to -3.5-feet NAVD88 with disposal at an active upland borrow pit site located at tax map parcel 134-7.00-187.00 in Dagsboro, Sussex County, Delaware. Stabilize approximately 335.0-linear feet of shoreline via placement of rip-rap stone revetment and the installation of 2 stormwater outfall structures.

The stated purpose of the project is to provide community access to the Lewes and Rehoboth Canal for recreational usage.

PROJECT LOCATION:

Property situated approximately 645.0-linear feet south of the Delaware State Route One Highway Bridge on the western bank of the Lewes and Rehoboth Canal, in Rehoboth, Sussex County, Delaware; Tax Map Parcel 334-19.00-173.00 (Lat.38.706059°N/Long.75.093696°W).

PERMIT CONDITIONS:

General Conditions:

1. The time limit for completing the work authorized ends on **31 December 2022**. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least one month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. The Special Conditions imposed by the Delaware Department of Natural Resources and Environmental Control (DDNREC) on your DDNREC Section 401 WQC and/or DDNREC CZM concurrence shall also be conditions to this Department of the Army permit.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

Special Conditions:

1. All work performed in association with the above noted project shall be conducted in accordance with the project plans prepared by Solutions Integrated Planning Engineering & Management, LLC., dated February 5, 2019, and entitled: "PROPOSED COMMUNITY DOCK AT OYSTER HOUSE VILLAGE TAX MAP PARCEL 334-19.00-173.00 LEWES REHOBOTH HUNDRED SUSSEX COUNTY, DELAWARE", nine (9) sheets.
2. Construction activities shall not result in the disturbance or alteration of greater than 0.21-acres of Waters of the United States.
3. Any deviation in construction methodology or project design from that shown on the above

noted drawings must be approved by this office, in writing, prior to performance of the work. All modifications to the above noted project plans shall be approved, in writing, by this office. No work shall be performed prior to written approval of this office.

4. This office shall be notified at least 10 days prior to the commencement of authorized work by completing and signing the attached *Notification/Certification of Work Commencement Form*. This office shall also be notified within 10 days of the completion of the authorized work by completing and signing the attached *Notification/Certification of Work Completion/Compliance Form*. Notifications required by this condition may be in writing by mail, fax, or electronic notification via email. Oral notifications are not acceptable. Similar notification is required each time maintenance work is to be done under the terms of this Corps of Engineers permit.

5. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration. (This special condition is applicable to Corps of Engineers permits that provide authorization under Section 10 of the Rivers and Harbors Act of 1899.)

6. The permittee is responsible for ensuring that the contractor and/or workers executing the activity(s) authorized by this permit have knowledge of the terms and conditions of the authorization and that a copy of the permit document is at the project site throughout the period the work is underway.

7. The permittee understands and agrees that no work shall be undertaken until the permittee has secured a signed Real Estate instrument from the Baltimore District, U.S. Army Corps of Engineers, ATTN: CENAB-REC, 2 Hopkins Plaza, Baltimore, Maryland, 21201, (410) 962-4944. All work shall be performed in accordance with the terms and conditions of said Real Estate instrument.

8. The general public must be allowed access on and through the government lands.

9. Dredging shall not occur from March 1 to September 30.

10. Pile driving shall not occur from March 1 to June 30.

11. If in the opinion of the District Commander or their authorized representative, any portion of boats moored to the dock interferes at any time with Federal dredging operations or general navigation, the permittee shall, at their own expense, take any and all steps to eliminate such interference for whatever duration is deemed necessary.

12. This permit does not obviate the permittee from obtaining any State or local assent required by law for the activity authorized.

13. The permittee shall abide by all requirements and conditions stipulated in the attached Section 408 Permission Decision letter dated 07 May 2019 (Enclosure A).

FURTHER INFORMATION:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

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

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

☐ Section 103 of the Marine Protection, Research and Sanctuaries Act.

2. Limits of this authorization.

a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.

b. This permit does not grant any property rights or exclusive privileges.

c. This permit does not authorize any injury to the property or rights of others.

d. This permit does not authorize interference with any existing or proposed Federal projects.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

d. Design or construction deficiencies associated with the permitted work.

e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data. The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. **Reevaluation of Permit Decision.** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (see 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. **Extensions.** General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit.

PERMITTEE: OHV DE, LLC
CENAP-OP-R-2018-00746-85

Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

(PERMITTEE)

(DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

(DISTRICT ENGINEER)

(DATE)

Kristen N. Dahle
Lieutenant Colonel, Corps of Engineers
District Commander

When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

(TRANSFEREE)

(DATE)