

In the Matter Of:

Department of Natural Resources & Environmental Control Hearing

FORT DUPONT REDEVELOPMENT & PRESERVATION

January 12, 2022



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DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
OF THE STATE OF DELAWARE

RE: Fort DuPont Redevelopment and
Preservation Corporation
Subaqueous Lands Permit Application

..

Virtual Public Hearing
Dial-In Number: 1-408-418-9388
Event Number: 2346 457 0050

Wednesday, January 12, 2022
6:00 p.m.

..

BEFORE: Theresa Newman, Hearing Officer
FOR THE DIVISION: Rebecca Bobola, DNREC

-- Transcript of Proceedings --

WILCOX & FETZER
Registered Professional Reporters
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1 MS. NEWMAN: Good evening. I
2 believe everyone has joined and ready to go,
3 so we will begin the virtual public hearing.

4 I want to thank you all for taking
5 time out of your day to connect with us.
6 Today's date is Wednesday, January 12, 2022.

7 We are here this evening to provide
8 a virtual hearing platform for the State of
9 Delaware's Department of Natural Resources
10 and Environmental Control to conduct this
11 public hearing on an application from Fort
12 DuPont Redevelopment and Preservation
13 Corporation for a Subaqueous Lands Permit.

14 My name is Theresa Newman, and
15 Secretary Garvin has appointed me to serve as
16 the hearing officer for tonight's formal
17 proceeding.

18 There have been changes made to
19 DNREC's standard hearing protocols
20 necessitated the by the ongoing COVID-19
21 pandemic.

22 First and foremost, this hearing is
23 being conducted virtually. Staff is not all
24 together in the same room. Everyone is

1 participating independently at their own
2 respective locations.

3 While there is no sign-in sheet to
4 document the physical attendance tonight,
5 WebEx does generate a list of those that are
6 virtually present so that the Department can
7 have a record of those who are electronically
8 joined in on this event.

9 At the conclusion of my
10 introductory remarks, I will be turning the
11 hearing over to the Department staff and then
12 to the applicant to provide formal
13 presentations for the benefit of the hearing
14 record being generated for the matter before
15 us tonight.

16 Once the presentations conclude,
17 those persons who have preregistered prior to
18 12:00 p.m. today will be acknowledged and
19 will be provided the opportunity to offer
20 comment on the proposed application in
21 alignment with DNREC's standard comment
22 protocols.

23 There is a court reporter virtually
24 present who will prepare a verbatim

1 transcript of the hearing pursuant to the
2 statutory requirement for DNREC to have the
3 same prepared. And, as always, that
4 transcript will be posted on the hearing
5 webpage dedicated to this matter as soon as
6 it is received.

7 In addition, I would encourage
8 those who are attending tonight's hearing to
9 also visit the hearing webpage dedicated to
10 this matter for additional details concerning
11 the proposed application by Fort DuPont
12 Redevelopment and Preservation Corporation.

13 The hearing webpage can be found
14 online under the Administrative Law Section
15 of DNREC's website that will be listed at the
16 conclusion of tonight's hearing.

17 Before we begin the presentations,
18 please be advised of the following protocols
19 that remain in place for all DNREC public
20 hearings.

21 All comment received must be
22 limited solely to the subject matter of
23 tonight's hearing. All comments pertinent to
24 the subject matter of the virtual hearing

1 will be incorporated into the record being
2 generated in this matter.

3 In order to ensure that everyone
4 who wishes to offer comment for the
5 Secretary's consideration is accommodated,
6 the record in this matter shall remain open
7 following tonight's proceeding through
8 Thursday, January 27, 2022.

9 There is only one authentic record
10 of this formal proceeding tonight, and it is
11 the official court reporter's verbatim
12 transcript.

13 The statutory purpose of tonight's
14 hearing is to build a record with regard to
15 the proposed application before us tonight.
16 A record consisting of the hearing
17 transcript, all written comment, all
18 exhibits, and eventually the Hearing
19 Officer's Report will be reviewed by
20 Secretary Garvin.

21 The Secretary will ultimately issue
22 an order following that review process
23 containing his decision on this matter and
24 the reason therefor.

1 Per DNREC's standard hearing
2 protocols, there will be no Q and A or chat
3 sessions permitted during this hearing.

4 Those who preregistered to offer
5 verbal comment will be acknowledged to speak
6 at the conclusion of the presentation portion
7 of tonight's proceedings.

8 Additional instructions with regard
9 to offering -- regarding the verbal comment
10 tonight will be provided at that time.

11 It is important to note no decision
12 has already been made by the Department, nor
13 will any decision be made tonight with regard
14 to the proposed application.

15 As previously stated, DNREC wishes
16 to ensure that everyone is enabled to offer
17 their comment for inclusion into the record
18 being generated in this matter. Therefore,
19 the record will remain open through Thursday,
20 January 27, 2022 so that the public may offer
21 written comments, should they wish to do so.

22 Comments may be submitted through a
23 comment web form link on the hearing webpage,
24 via e-mail to

1 DNRECHearingComments@delaware.gov, or via the
2 U.S. Postal Services at the physical address
3 for DNREC indicated on the hearing webpage
4 and/or the public notices previously issued
5 in this matter.

6 Written comments to DNREC may not
7 be submitted by using any social media
8 platform such as Twitter, Facebook, YouTube,
9 or text messaging.

10 Please remember that all comment
11 received either through USPS or the
12 electronic mechanisms just noted now, as long
13 as received by the Department on or before
14 January 27th, will bear the exact same weight
15 and will be considered equally by the
16 Secretary prior to making his final decision
17 to this matter.

18 Lastly, the ultimate decision
19 regarding this matter is made by DNREC's
20 Secretary Garvin. This formal hearing
21 tonight acts as a mechanism to enable the
22 Department to thoroughly vet the application
23 matter to the public and to let the public
24 know the various ways which comment may be

1 submitted for Secretary Garvin's
2 consideration if so desired.

3 I will now hand it over to
4 Mrs. Bobola with the Division of Water to
5 provide the Department's presentation.

6 MS. BOBOLA: Thank you, Theresa.
7 My name is Rebecca Bobola. I'm an
8 Environmental Scientist with the Wetlands and
9 Situation Lands Section of DNREC. And we
10 will go through our presentation showing the
11 application as submitted by the applicant.

12 Okay. The purpose of the public
13 hearing: To provide the public an
14 opportunity to comment on Fort DuPont
15 Redevelopment and Preservation Corporation's
16 application to install approximately 1,600
17 linear feet of rip-rap revetment for
18 shoreline stabilization. This application is
19 for a subaqueous lands permit.

20 On this slide, visible is the
21 approximate project location with the start
22 and end points represented by the yellow
23 stars located centrally on the slide.

24 Here is another representation of

1 the approximate project location, again
2 represented with the start and end points
3 with the yellow stars and the orange line
4 representing roughly the location of the
5 rip-rap revetment, and this one in respect to
6 the surrounding parcels seen by the faint
7 yellow lines.

8 This is located at 260 Old Elm
9 Avenue, Delaware City, New Castle County,
10 Delaware.

11 This application was placed on
12 public notice, a 20-day public notice period
13 published in two state publications, the
14 Delaware State News and the News Journal from
15 October 13, 2021 to November 2, 2021.

16 In response to the public notice,
17 we received one written comment in objection
18 requesting a public hearing.

19 For the project overview, visible
20 on this slide is the entire scope of work for
21 this application from a plan view. Again,
22 this is to install approximately 1,600 linear
23 feet of rip-rap revetment for shoreline
24 stabilization. The beginning -- it begins

1 where the boat ramp bulkhead ends and extends
2 south along the bank.

3 Broken down in segments here, this
4 is roughly the first third, and then Cross
5 Section A-A, as submitted.

6 This is the central third of the
7 plan view, if you will, and Cross Section B-B
8 as submitted.

9 And, finally, this is the final
10 third of the plan view located at the left of
11 the screen, and then Cross Section C-C and
12 Cross Section D-D. Cross Section C-C
13 illustrates the existing culvert that can be
14 seen.

15 As part of the application review
16 process, it goes under regulatory review
17 through DNREC Division of Water, Wetlands and
18 Subaqueous Lands Section.

19 I conducted a desktop review to
20 determine if the proposed structure is
21 consistent with regulatory requirements as it
22 pertains to the scope of work.

23 Theresa, I would like to introduce
24 my exhibits at this time.

1 MS. NEWMAN: Go ahead.

2 MS. BOBOLA: Exhibit 1: The state
3 laws and regulations regarding subaqueous
4 lands.

5 Exhibit 2: Subaqueous Lands Permit
6 Application as originally submitted and as
7 revised.

8 Exhibit 3: Public notice as
9 published in the Delaware State News and in
10 the News Journal and as posted on the
11 Delaware Public Meeting calendar and on the
12 DNREC website.

13 Exhibit 4: DNREC public hearing
14 presentation.

15 Exhibit 5: Comments received prior
16 to the public hearing.

17 Exhibit 6: The Army Corps of
18 Engineer canal easement.

19 Exhibit 7: America's Water and
20 Infrastructure Act of 2018, section 1331(F).

21 Exhibit 8: Letter received from
22 the applicant on January 12, '22.

23 This concludes my presentation at
24 this time.

1 These are the means of submitting
2 comment that Theresa presented at the
3 beginning of the presentation, individual for
4 anyone that might need them.

5 MS. NEWMAN: Thank you, Ms. Bobola.
6 We have received the Department's exhibits as
7 you have presented, and I do hereby mark the
8 exhibits as Department's Exhibits 1 through
9 8.

10 Ms. Bobola, I'm going to place you
11 on mute, and we will move on to the
12 applicant's representative to provide their
13 presentation.

14 MS. BOBOLA: Thank you.

15 MR. DOWNARD: Thank you, Theresa.

16 MS. NEWMAN: Mr. Downard, you may
17 proceed with the presentation.

18 MR. DOWNARD: I still don't have
19 the shared.

20 MS. NEWMAN: Oh, I'm sorry.
21 Gotcha. And Mr. Downard, for the record if
22 you could just give your first and last name
23 and what company you are with or how you are
24 representing the applicants.

1 MR. DOWNARD: Yes. My name is
2 Ralph Downard. I'm a Senior Project Manager
3 with Duffield Associates. And we are the
4 authorized agent for the applicant, the Fort
5 DuPont Redevelopment Preservation
6 Corporation.

7 MS. NEWMAN: Thank you. You should
8 have the presenter role to share your screen.

9 MR. DOWNARD: All right. Good
10 evening, everybody. Again, this is just an
11 introductory slide stating that this
12 presentation is for the Fort DuPont
13 Redevelopment and Preservation Corporation
14 for impacts associated to the Delaware City
15 Branch Channel Revetment dated January 12,
16 2022.

17 Here is an agenda of this
18 presentation. I am first going to discuss a
19 little of the project history, provide some
20 project overview, provide a summary of the
21 public comments, go into a little discussion
22 of the Subaqueous Land Permit, and then also
23 to discuss the project benefits.

24 So the project history, as I guess

1 it's kind of described as planning for the
2 future.

3 The Fort DuPont Redevelopment and
4 Preservation Corporation was established by
5 Delaware Legislation by House Bill 310 in
6 July 2014 to preserve and protect the
7 recreational amenities of Fort DuPont and to
8 make capital improvements to the 325-acre
9 campus.

10 The Delaware City Branch Canal:
11 The branch canal is in the process of being
12 transferred to the Fort DuPont Redevelopment
13 and Preservation Corporation, the State of
14 Delaware, through the America's Water
15 Infrastructure Act of 2018.

16 Project Overview: This is a
17 similar slide that was presented to DNREC,
18 just trying, just generally showing the
19 extent of the project from the bulkhead of
20 the boat ramp to the east, extending just
21 short of the Fifth Street bridge which is
22 just shown off screen here to the west.

23 This is more of a plan view from
24 the bridge showing generally the existing

1 conditions of the branch canal. And the left
2 hand side, obviously, being Delaware City,
3 and the right hand side of the photograph
4 being the Fort DuPont.

5 The revetment project is located
6 along the Delaware City Branch Canal, as
7 demonstrated on the aerial photograph,
8 between the DNREC boat ramp bulkhead and the
9 Ninth Street bridge.

10 The revetment project will rebuild
11 the former rip-rap armored slope.

12 The original armored slope has
13 deteriorated by erosion and is no longer
14 serviceable. This erosion is threatening the
15 stability of the adjacent lands. In
16 addition, the sediments entering the branch
17 canal channel from this slope could obstruct
18 boat traffic.

19 Here is a photograph near the
20 western end of the existing channel, branch
21 channel. And you can see by the leaning
22 trees here evidence of the erosion that's
23 taking place.

24 This is a closeup of a similar area

1 of banks, and you can see the trees starting
2 to fall into the channel and erosion that's
3 taking place.

4 This slide shows an existing
5 condition of the branch channel, and these
6 are some of the remnants of the preexisting
7 channel stabilization.

8 So this application is considered a
9 new application, a new project, because these
10 existing features are no longer serviceable.

11 The revetment project will impact
12 1,600 linear feet of the bank. 5,363 plus or
13 minus cubic yards of rip-rap will be placed
14 along the bank and impact 0.82 plus or minus
15 acres of regulated waters.

16 The rip-rap will be placed on
17 geotextile fabric with no modifications to
18 the existing slope and no backfill or
19 dredging.

20 The erosion and sediment control
21 plans for the revetment and adjoining lands
22 was approved by DNREC on December 15, 2021.

23 We wanted to discuss some of the
24 public comments which we have received as

1 part of this presentation. One of the
2 comments received was -- or, actually,
3 several of the comments received dealt with
4 the Section 106 review, which deals with
5 historical and cultural resources.

6 A Section 106 review has been
7 initiated as part of the U.S. Army Corps of
8 Engineers Section 404 and Section 408 permit
9 applications.

10 The Delaware Division of Historic
11 and Cultural Affairs has been notified.

12 A phase one archeological
13 evaluation has been completed.

14 The U.S. Army Corps of Engineers'
15 staff archaeologist is also reviewing the
16 applications and coordinating with the State
17 Historic and Cultural Affairs Office to
18 ensure that no historic artifacts are
19 impacted without being properly documented.

20 The Section 106 review process is
21 required for federal projects and is not a
22 DNREC issue, which is why no discussion was
23 included with this permit application.

24 Another comment received concerning

1 the project was dealing with project
2 aesthetics. We wanted to demonstrate with
3 virtually the exact same project which
4 occurred on the Delaware City side of the
5 branch channel.

6 And this photograph on the left
7 shows the construction after, just a
8 photograph showing the site after
9 construction. And this photograph shows what
10 it looks like three years after construction,
11 where virtually all the rip-rap is no longer
12 visible.

13 There is also comments concerning
14 about the existing trees being removed at the
15 top of the bank. These trees will be removed
16 as part of the construction of the promenade,
17 so whether the revetment project occurs or
18 not, those trees will be removed.

19 There is also some comments about
20 some errors made with the application. Lines
21 4 and 16 of the basic application contradicts
22 line one of Appendix 1 concerning new versus
23 repair and replace. This contradiction was
24 corrected, and the proposed revetment is

1 considered a new activity.

2 The measurement listed on Line 5 of
3 the basic application, which states 2,000
4 linear feet of shoreline stabilization, is
5 not consistent with Line 2 of Appendix 1,
6 which states 1,600 linear feet of shoreline
7 stabilization. This contradiction was
8 corrected, and now 1,600 is listed in both
9 locations.

10 Line 19 of the basic application,
11 the box that affirmatively designates the
12 listed authorized agent was not checked. The
13 box has now been checked.

14 On Line 8D on Appendix 1, or I,
15 excuse me, it has been revised to indicate
16 that a geotextile fabric is now going to be
17 placed behind the rip-rap.

18 Concern was raised about the
19 two-to-one slope listed on Appendix 1, Lines
20 8E and 8F, when compared with the actual
21 measurements on the cross sections provided
22 with the application.

23 In response, a plus-minus indicated
24 some variation was added to these cross

1 sections to account for minor deviations that
2 will likely occur when working in a field.

3 Oops. I'm sorry. The revised
4 applications containing these revisions was
5 submitted to DNREC on January 11, 2022 and
6 posted.

7 Other comments were received.
8 Detailed responses to all of these revised,
9 received comments were provided to DNREC on
10 January 12, 2022.

11 The Subaqueous Lands Permit
12 Application: I am going to go through the
13 same basic slides that were presented by
14 DNREC, one showing the plan view and then
15 showing the cross section.

16 I wanted to point out in this cross
17 section that the design assumes that the
18 layer of rip-rap is fairly uniform, as
19 opposed to the way the DNREC calculation is
20 done where they assume more of a triangular,
21 web-shaped configuration.

22 So this shows the eastern end of
23 the project nearest the boat ramp and showing
24 the Cross Section A-A. This is the central

1 section showing Cross Section B-B. And,
2 again, the thickness of the rip-rap remains
3 the same.

4 This cross section and plan view
5 shows the cross section over the existing
6 outfall structure demonstrated, shown here in
7 both locations, and the existing rip-rap
8 blanket.

9 And the last slide here in this
10 section shows the western extent of the
11 revetment project and then the plan view, as
12 well.

13 The project benefits: Maintain --
14 so the project benefits is to maintain the
15 branch channel geometry, reduce the slope
16 sloughing into the channel, and thus maintain
17 boat traffic, repair erosion pockets
18 throughout the slope, protect the
19 infrastructure along the top of the banks,
20 along the top of the slope, which includes
21 the public access promenade, houses, and the
22 site infrastructure.

23 This concludes the applicant's
24 presentation, and we would like this to be

1 entered into the record. Thank you.

2 MS. NEWMAN: Thank you,
3 Mr. Downard. If you will, after the hearing,
4 please provide Rebecca with the presentation,
5 the electronic version, and we will post that
6 online.

7 So as you presented this
8 presentation as the applicant's exhibit, I do
9 hereby mark this as Applicant's Exhibit 1.
10 And that does conclude your presentation,
11 Mr. Downard?

12 MR. DOWNARD: Yes. Thank you.

13 MS. NEWMAN: Okay. Thank you. And
14 just real quick before we begin the public
15 comment portion, Mr. Randall, I just want to
16 check with you to make sure you have nothing
17 to add to the presentation?

18 MR. RANDOL: I apologize. I was on
19 mute.

20 MS. NEWMAN: That's okay.

21 MR. RANDOL: No. Thanks for
22 asking, though. I'm good with the
23 presentation.

24 MS. NEWMAN: Okay. Great. Thank

1 you. And I'm also going to ask Mr. Gorski --
2 I will unmute you also -- was there anything
3 that you would like to add to the applicant's
4 presentation?

5 MR. GORSKI: No. Ralph covered all
6 the technical elements pretty well, so I
7 don't have anything else to add. Thank you.

8 MS. NEWMAN: Wonderful. Thank you.
9 Okay. So we are going to go ahead and move
10 forward to public comment, now that the
11 presentations have concluded.

12 And those who have preregistered
13 are going to be given the opportunity to
14 offer the verbal comment tonight.

15 And so per the protocol set forth
16 in DNREC's public hearing webpage, those
17 wishing to have offered a verbal comment
18 during the virtual hearing must have
19 preregistered with DNREC no later than noon
20 of the day of the hearing.

21 With that being said, all
22 commenters must adhere to the Department's
23 protocols with regard to offering verbal
24 comment, including making their comments as

1 concise as possible, respecting the
2 three-minute time limit, and limiting their
3 comments to the subject matter of this
4 hearing.

5 To assist the commenter with
6 regards to the amount of time they have,
7 there is a visual timer that you will see on
8 the screen. When it is that speaker's turn
9 to comment, that speaker's audio will be
10 unmuted, and their identity will be
11 confirmed, and the timer will begin.

12 At the end of the three minutes,
13 the speaker's audio will automatically be
14 placed back on mute.

15 Please note that there is no live
16 video feed of the commenter, as they will
17 provide a comment by audio only.

18 All comments will be transcribed by
19 the court reporter and thereby incorporated
20 into the hearing record.

21 If the speaker is not able to
22 finish their comment within the three-minute
23 time allotted, the Department encourages you
24 to submit the completed comment in writing no

1 later than January 27th.

2 With that being said, there is only
3 one commenter that has registered to provide
4 comment at tonight's hearing. May I have
5 Mr. Tim Konkus unmuted? And when we do so,
6 please state your name and who you represent
7 for the record, if any, and then you may
8 begin your comment, Mr. Konkus.

9 MR. KONKUS: Good evening. My name
10 is Tim Konkus. I live at 302 Canal Street.
11 And I represent myself.

12 I want to thank DNREC for the
13 thoughtful review of these public hearing
14 comments, as they help resolve many issues in
15 the application.

16 I believe that this application,
17 with as many corrections as has been made,
18 still needs to be resubmitted, and it should
19 address the project benefits that are
20 important to the community, the first being
21 the historic nature of the Delaware City
22 Branch Channel as the only remaining portion
23 of the historic C&D Canal.

24 Any company with the name

1 "preservation" in its title should fully
2 embrace the historic nature of this canal
3 when they expect to ruin, potentially ruin,
4 every artifact that remains in the canal.

5 Second, it's nice to know that
6 someone is concerned about the artifacts and
7 how they will be preserved. However, that
8 needs to become public knowledge and not just
9 published on the 15th of December after my
10 previous comments.

11 Third, the new plan needs to
12 address the high level of aesthetic appeal to
13 the residents and visitors along the Delaware
14 City waterfront.

15 Right now, we are promised nothing
16 other than a spillway that you could find in
17 any area of the country, and it doesn't
18 address the historic nature nor any aesthetic
19 aspect.

20 Fifth -- or fourth -- this plan
21 should be a definitive match between the bona
22 fide bids that are received to construct the
23 project matched against the organization's
24 annual funding.

1 Fifth, it should provide the
2 empirical location of the horizontal
3 benchmarks used in the engineering drawings
4 so anyone can determine how far into the
5 waterway this project is going to extend.

6 Sixth, the new plan needs to
7 address how there will be no backfill
8 required to complete the project at grade.
9 It defies logic that there will be no
10 dredging and there will be no backfill to put
11 this slope as it's envisioned and make those
12 corrections.

13 Seven, the new plan must contain a
14 sediment and erosion control plan. In the
15 notes it says it was finalized in this year,
16 but that has not been made public to anyone,
17 and that needs to happen, and it needs to be
18 part of this application.

19 And eighth, how the project will be
20 a collaborative effort to ensure the safe,
21 open, and free navigation of the channel
22 during and after the project to include
23 acknowledgment by the applicant that he will
24 coordinate with U.S. Coast Guard on its

1 notice to mariners.

2 This project, as represented by
3 this application, is in its infancy. Much
4 more substantive work needs to be done to
5 ensure that the project has been --

6 (Cuts off)

7 MS. NEWMAN: Mr. Konkus, I
8 apologize. Your three minutes was up, and it
9 does mute automatically. If you could please
10 submit the remaining portion of your comment
11 in writing.

12 With that being said, that does
13 conclude the public comment portion of
14 tonight's hearing. I want to thank everyone
15 who has attended tonight's hearing.

16 And again those who may want to
17 provide a public comment may do so in writing
18 no later than Thursday, January 27, 2022, to
19 which the hearing record will remain open
20 through.

21 The hearing is now concluded at
22 6:30 p.m. Thank you all for attending.

23 (Concluded at 6:30 p.m.)

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CERTIFICATE

I, Lorena J. Hartnett, a Notary Public and Registered Professional Reporter, do hereby certify that the foregoing is an accurate and complete transcription of the proceeding held at the time and place stated herein, and that the said proceeding was recorded by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witnesses.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this 14th day of January 2022.



Lorena J. Hartnett
Registered Professional Reporter

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0.82 17:14	5	aerial 16:7 aesthetics 19:2
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