



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

Office of the
Secretary

Phone: (302) 739-9000
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Secretary's Order No.: 2018-W-0044

RE: Application of Angola By The Bay, Property Owners Association, to construct and operate an additional twenty-four (24) slips to its existing 130 slip Marina, thus necessitating Applicant to obtain the following: (1) Renewal/Amendment of the existing Marina Permit; (2) a Subaqueous Lands Permit and Water Quality Certification; and (3) Renewal/Amendment of the existing Subaqueous Lands Lease

Date of Issuance: August 2, 2018

Effective Date: August 2, 2018

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") pursuant to 7 *Del.C.* §§6003, 6004(b), 6006(4), Delaware's *Subaqueous Lands Act* (7 *Del.C.* Chapter 72), and all other relevant statutory authority, the Department of Natural Resources and Environmental Control ("Department", "DNREC") issues this Order, approving a permit to allow Angola By The Bay, Property Owners Association ("Applicant", "Angola BTB"), to construct a major marina alteration to its existing Marina ("Application"). The Delaware Regulations controlling such marina construction are as follows, to wit: *Regulations Governing the Control of Water Pollution* (7 DE Admin. Code 7201), *Marina Regulations* (7 DE Admin. Code 7501), *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and Section 401 of the *Clean Water Act* (33 U.S.C. §1251 *et seq.*).

Background and Findings of Fact

On November 30, 2016, the Department's Division of Water, Wetlands and Subaqueous Lands Section ("WSLS"), received an application from Coastal & Estuarine Research, Inc., submitted on behalf of the Applicant, to construct a major marina alteration to its existing Marina ("Application"). Specifically, Applicant proposes to install an additional 24 slips to its existing 130 slip marina, consisting of a 5 by 4 foot long section of fixed pier, a 4 by 12 foot long gangway, a 5 by 132 foot long floating pier, ten (10) 4 by 16 foot long floating finger piers, and two (2) 4 by 20 foot long floating finger piers. Additionally, Applicant proposes to conduct new hydraulic dredging consisting of 800+ cubic yards of material to a depth of -4 feet at the mean low water line in Burton Prong at the terminus of Marina Drive. The dredged material will be disposed of via pipeline to an upland confined disposal area west of Bridgeway Drive in Lewes, Delaware.

The Application was placed on a 45 day public notice by the Department on March 8, 2017, and a 20 day public notice on August 23, 2017. During those public notice periods, the WSLS received four written comments against the project. The objections from the public stated that the waterbody is already inundated with boat traffic, which leads to unsafe conditions for non-motorized water dependent activities such as paddle-boarding, canoeing and kayaking. Additional concerns from the public included requests for DNREC to take steps to reduce light pollution in the community, and to implement a no wake zone from the Angola BTB Marina to the intersection of Burton and Hopkins Prong. At that time, there were no comments received in support of the application.

Given the comments received on the Applicant's proposed project (and the contentious history over the past thirty years with regard to previous DNREC public hearings concerning marinas on Herring Creek), the Department determined it to be in the public's best interest to hold a public hearing regarding this present application. Accordingly, on September 27, 2017, the Department provided public notice that a public hearing would be held on October 25, 2017. Subsequently, a total of seven letters of objection to the Applicant's proposed project (and one letter of support) was received by the Department. The one letter supporting the project was from Ron Oronzio, Jr., President of the Angola BTB Property Owners Association, who stated that the proposed expansion project offers a much needed improvement to their existing community marina.

The Department held its public hearing concerning this matter on October 25, 2017, which was attended not only by Department staff and representatives of the Applicant, but also by over thirty individuals from the public. Proper notice of the hearing was provided as required by law.

Following the public hearing of October 25, 2017, the technical experts in the Department's Division of Water prepared a Technical Response Memorandum ("TRM") to (1) specifically address the public concerns raised at the time of the hearing; (2) provide a formal regulatory review of the Applicant's proposed project; and (3) offer the Division of Water's conclusions and recommendations with regard to this pending Application for the benefit of the hearing record generated in this matter. This TRM, dated February 8, 2018, was received for inclusion into the hearing record by Hearing Officer Robert P. Haynes, Esq., on February 20, 2018.

It is important to note that, while DNREC does regulate boat speeds, it is specifically the Department's Division of Fish & Wildlife (and not the Division of Water) which holds that responsibility. Thus, Hearing Officer Lisa A. Vest requested a supplemental TRM from the Department's Division of Fish & Wildlife, Natural Resources Police Unit, to address the aforementioned boating safety concerns from vessel congestion in the area of Angola BTB. Chief Drew T. Aydelotte of the Department's Natural Resources Police Unit provided his written response to this request in a TRM received by Ms. Vest for inclusion into this hearing record on May 23, 2018.

Subsequently, Hearing Officer Vest prepared her Hearing Officer's Report ("Report"), dated May 24, 2018, which attached both TRMs referenced above, and expressly incorporated both therein. Ms. Vest's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report, and provided findings of fact, reasons, and conclusions that recommend the Department approve this Application, subject to the conditions set forth in the following three draft approval documents: (1) Subaqueous Lands Permit SP-500/16, for the Applicant's use of its private subaqueous lands, and Water Quality Certification WQ-500/16; (2) Subaqueous Lands Lease SL-484/17, for the Applicant's use of public subaqueous lands for ten years; and (3) Marina Permit MP-207/12(S1), for the Applicant's construction and operation of an additional twenty-four (24) slips to its existing 130 slip marina. The Report also addressed the public comments received in this matter, and concluded that the same did not warrant the Department's denying this Application, or delaying the permit decision to receive additional information.

Reasons and Conclusions

This application is for a major marina expansion project at Angola BTB, specifically, to install an additional 24 slips to an existing 130 slip marina, and to conduct new dredging in the proposed slip area in Burton Prong of Herring Creek, located at the terminus of Marina Drive in Lewes, Delaware. I find that the proposed project will require the Applicant to (1) renew and amend its existing Marina Permit; (2) obtain a Subaqueous Lands Permit; and (3) renew and amend its existing Subaqueous Lands Lease and Water Quality Certification. I further find that the Applicant's proposed project is subject to the requirements of 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), *Marina Regulations* (7 DE Admin. Code 7501), *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and Section 401 of the *Clean Water Act* (33 U.S.C. §1251 *et seq.*).

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 docking facility and dredging as described in Angola BTB's application complies with the Regulations administered by the Wetlands and Subaqueous Lands Section. In addressing the future maintenance dredging cycle at this marina, a special condition has been included in the draft permits prepared in this matter, specifically, to limit the maintenance dredging cycle to no more than once every four years. This special condition takes into consideration that (1) the authorization of the proposed docking facility without dredging would likely result in a continual disturbance of aquatic biota by the suspension of sediments by boat propellers, even with a limitation on vessel drafts, due to the shallowness of the site; and (2) the new dredging activity would provide relatively short-term environmental impacts.

Additional considerations were given by the Department's experts to the public concerns regarding vessel traffic and public safety, as well as the potential for water use conflicts between non-motorized water dependent activities and vessels utilizing Burton Prong. Determining the carrying capacity of a waterbody in relation to recreational use and safety is an important consideration when evaluating whether public use of State waters is restricted. Thus, it is important to not only take into consideration the opinions set forth in the Division of Water's TRM, but also those provided in Chief Aydelotte's TRM as well.

In order to address the above concerns regarding vessel traffic, public safety, and the potential for water use conflicts, as voiced by the Department's experts in both the Division of Water and the Natural Resources Police Unit of the Division of Fish and Wildlife, the following special condition has been included in the draft Marina Permit and draft Subaqueous Lands Lease:

No further marina expansion shall be authorized at the Angola By The Bay Marina until such time that the Department is able to open, amend, and adopt new Marina Regulations through the appropriate public process.

While Chief Aydelotte sees no need to recommend denial of this pending Application, he opines that the Applicant must acknowledge that wake issues will arise and increase with the marina expansion, as will vessel traffic. The area surrounding the Applicant's marina is currently a high traffic zone, with vessels leaving to enter the Herring Creek, Rehoboth Bay and points beyond, with eventual return to the home marinas. Burton Prong in itself is not necessarily a high use area, but rather, a travel lane. The Applicant will have to assume responsibility of increasing vessel traffic and increased wake issues, as officers on patrol may be

delayed in response or sporadic in visibility to the area, given the current numbers of the Natural Resources Police (and their commitment to serve all of Delaware's boating community).

With regard to those comments requesting the establishment of a no wake area, Chief Aydelotte notes that this area is not currently posted as a "slow/no wake" area. There are sufficient distances where the 100 ft. wake regulation allows increased speed through most of the Burton Prong length. While most vessels use courtesy when operating, vessel travel outside of the 100 ft. distance is not regulated.

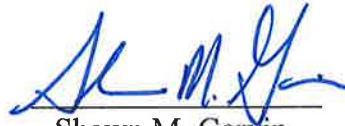
In conclusion, the State of Delaware is charged with upholding the Public Trust Doctrine, which has been used historically in protecting the public's rights to fishing, commerce, navigation, recreation and even preservation as an appropriate public use. The Department recognizes that there are concerns 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 marina expansion, and have recommended issuance of all permits necessary for completion of the same to the Applicant in this matter.

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 Application submitted by Angola By The Bay Property Owners Association. Accordingly, this Order approves all permits required for this proposed marina expansion, consistent with the Record developed in this matter, and directs that the same be issued by the Department in the customary form, and with appropriate conditions.

Further, the Department concludes and directs the following:

1. The Department has jurisdiction under 7 *Del. C.* §§6003, 6004, 6006(4), 7 *Del. C.* Ch. 72, and all other relevant statutory authority, to make a final determination on the Application, after holding a public hearing and considering the public comments and all information contained in the Record generated in this matter;
2. The Department provided proper public notices of the Application of Angola By The Bay Property Owners Association, and of the public hearing held on October 25, 2017, and held said hearing 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 Report, prior to issuing this Order as its final decision;
4. The Department has carefully considered the factors required to be weighed in issuing all permits required by the Applicant's proposed marina expansion, and finds that the Record supports approval of the Application, based upon the terms and conditions in the draft documents prepared by the WSLs, and the issuance of all required permits associated with same;
5. The Department shall issue the following permits to the Applicant: (1) a renewed and amended Marina Permit; (2) a Subaqueous Lands Permit; and (3) a renewed and amended Subaqueous Lands Lease and Water Quality Certification. The permits and leases shall include all special conditions to ensure that Delaware's environment and public health will be protected from harm;
6. The Department adopts the Report and its attachments as further support for this decision;

7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
8. 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.



Shawn M. Garvin
Secretary

HEARING OFFICER'S REPORT

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

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

RE: Application of Angola By The Bay, Property Owners Association, to construct and operate an additional twenty-four (24) slips to its existing Marina ("Phase V" project), thus necessitating Applicant to obtain the following: (1) Renewal/Amendment of the existing Marina Permit; (2) Subaqueous Lands Permit and Water Quality Certification; and (3) Renewal/Amendment of the existing Subaqueous Lands Lease

DATE: May 24, 2018

I. BACKGROUND AND PROCEDURAL HISTORY:

A public hearing was held on Wednesday, October 25, 2017, at 6:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department") Field Office, located at 901 Pilottown Road, Lewes, Delaware, to receive comment on the application of Angola By The Bay, Property Owners Association ("Angola BTB", "Applicant"), to (1) renew and amend its existing Marina Permit; (2) obtain a Subaqueous Lands Permit; and (3) renew and amend its existing Subaqueous Lands Lease and Water Quality Certification. The Applicant's proposed project is subject to the requirements of 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), *Marina Regulations* (7 DE Admin. Code 7501), *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and Section 401 of the *Clean Water Act* (33 U.S.C. §1251 *et seq.*).

On November 30, 2016, the Department's Division of Water, Wetlands and Subaqueous Lands Section ("WSLS"), received an application from Coastal & Estuarine Research, Inc., submitted on behalf of the Applicant, to construct a major marina alteration to its existing Marina ("Application"). Specifically, Applicant proposes to install an additional 24 slips ("Phase V") to its existing 130 slip marina, consisting of a 5 by 4 foot long section of fixed pier, a 4 by 12 foot long gangway, a 5 by 132 foot long floating pier, ten (10) 4 by 16 foot long floating finger piers, and two (2) 4 by 20 foot long floating finger piers. Additionally, Applicant proposes to conduct new hydraulic dredging consisting of 800+ cubic yards of material to a depth of -4 feet at the mean low water line in Burton Prong at the terminus of Marina Drive. The dredged material will be disposed of via pipeline to an upland confined disposal area west of Bridgeway Drive in Lewes, Delaware.

The Application was placed on a 45 day public notice by the Department on March 8, 2017, and a 20 day public notice on August 23, 2017. During the public notice periods, the WSLS received four written comments against the project. The objections from the public stated that the waterbody is already inundated with boat traffic, which leads to unsafe conditions for non-motorized water dependent activities such as paddle-boarding, canoeing and kayaking. Additional concerns from the public included requests for DNREC to take steps to reduce light pollution in the community, and to implement a no wake zone from the Angola BTB Marina to the intersection of Burton and Hopkins Prong. At that time, there were no comments received in support of the application.

Given the public comments received on the Applicant's proposed project (and the contentious history over the past thirty years with regard to previous DNREC public hearings concerning marinas on Herring Creek), the Department determined it to be in the public's best

interest to hold a public hearing regarding this present application. Public notice of the upcoming public hearing (to be held on October 25, 2017) was made on September 27, 2017. Subsequently, a total of seven letters of objection to the Applicant's proposed project (and one letter of support) was received by the Department. The one letter supporting the project was from Ron Oronzio, Jr., President of the Angola BTB Property Owners Association, who stated that the proposed expansion project offers a much needed improvement to their existing community marina. Mr. Oronzio further opined in his letter that, regardless of whether the proposed project is approved or denied, the issues pertaining to the operation of boats on Burtons Prong will not change.

The Department held its public hearing concerning this matter on October 25, 2017, which was attended not only by Department staff and representatives of the Applicant, but also by over thirty 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 consists of the following documents: (1) a verbatim transcript; (2) four documents introduced by presiding Hearing Officer Robert P. Haynes, Esq., at the public hearing held on October 25, 2017, and marked accordingly as "DNREC Exhibits 1-4"; (3) four documents introduced by the Applicant's consultant, Evelyn Maurmeyer (of Coastal & Estuarine Research, Inc.) at the time of the aforementioned public hearing, and marked accordingly as "Applicant Exhibits 1-4"; (4) Technical Response Memorandum from Julie R. Molina, Environmental Scientist, Wetlands and Subaqueous Lands Section, DNREC Division of Water, dated February 8, 2018; (5) and Technical Response Memorandum from Drew T. Aydelotte,

Chief, Natural Resources Police, DNREC Division of Fish & Wildlife, dated May 23, 2018.

The Department's persons primarily responsible for reviewing this application, Ms. Molina, along with Steven Smailer, Environmental Program Administrator, DNREC Division of Water, developed the record with the relevant documents in the Department's files.

Following opening remarks from Hearing Officer Haynes (and the introduction of the Department's exhibits to be entered into the hearing record), Ms. Maurmeyer proceeded to offer a brief presentation on behalf of the Applicant for the benefit of the hearing record. She explained that there was a high demand from the community for the marina expansion, and submitted the following exhibits in support of that statement: (1) a slip waiting list for 413 names on it, some of which have been on the list for 17 years; (2) a petition with over 150 names of residents that are in favor of the proposed project; (3) 60 individual written comments in support of the project; and (4) U.S. Army Corps of Engineers Final Permit dated March 28, 2017. After the Applicant's presentation was concluded, the floor was then opened for the purpose of offering public comment on the record regarding this proposed project.

The hearing record generated in this matter indicates that the majority of those in attendance at the public hearing of October 25, 2017 were in support of the Applicant's project. There were other individuals in attendance against the project; one of those individuals, Mr. Herb Miller, stated that he was speaking on behalf of those opposed to the Applicant's proposed project but who could not attend the hearing. The major concern voiced by Mr. Miller was the boaters who speed up and down the waterway, and the shortage of marine police to control the same. Mr. Miller further noted that boat wake energy adds monetary damage to waterfront homeowners (who then have to install stronger shoreline stabilization techniques for their properties), and creates a danger to people involved in non-motorized water related activities.

Mr. Miller requested that the Department implement a no wake zone from the Angola BTB Marina to the Hometown Angola Beach, LLC Marina.

Subsequent to Mr. Miller offering his comments, other individuals from the Angola BTB community spoke about their own concerns with regard to the wake energy from speeding vessels. It was the opinion of those commenters that the speeding boaters could not just be blamed on their own community, but also from other waterfront property owners and the boating community in general.

Following the public hearing of October 25, 2017, the technical experts in the Department's Division of Water prepared a Technical Response Memorandum ("TRM") to (1) specifically address the public concerns raised at the time of the hearing; (2) provide a formal regulatory review of the Applicant's proposed project; and (3) offer the Division of Water's conclusions and recommendations with regard to this pending Application for the benefit of the hearing record generated in this matter. This TRM, dated February 8, 2018, was received for inclusion into the hearing record by Hearing Officer Haynes on February 20, 2018.

I find that the Division of Water's TRM offers a detailed regulatory review of all aspects of the Applicant's proposed project, identifies all of the concerns raised at the public hearing of October 25, 2017, and responds to them in a balanced manner, accurately reflecting the information contained in the formal hearing record. Thus, the aforementioned TRM is attached hereto as Appendix "A" and expressly incorporated herein as such.

It should be noted that, although DNREC regulates boat speeds, it is specifically the Department's Division of Fish & Wildlife (and not the Division of Water) which holds that responsibility. Accordingly, this Hearing Officer reached out to the Department's Natural Resources Police Unit with the Division of Fish & Wildlife to request a specific Technical

Response Memorandum regarding the aforementioned boating safety concerns from vessel congestion in the area of Angola BTB. Chief Drew T. Aydelotte of the Department's Natural Resources Police provided his written response to this request in a TRM received for inclusion into this hearing record on May 23, 2018. Chief Aydelotte's TRM is attached hereto as Appendix "B" and expressly incorporated herein as such.

III. RECOMMENDED FINDINGS AND CONCLUSIONS:

This application is for a major marina expansion project at Angola BTB, specifically, to install an additional 24 slips to an existing 130 slip marina and conduct new dredging in the proposed slip area in Burton Prong of Herring Creek, located at the terminus of Marina Drive in Lewes, Delaware. Preliminarily, I find that the proposed project will require the Applicant to (1) renew and amend its existing Marina Permit; (2) obtain a Subaqueous Lands Permit; and (3) renew and amend its existing Subaqueous Lands Lease and Water Quality Certification. I further find that the Applicant's proposed project is subject to the requirements of 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), *Marina Regulations* (7 DE Admin. Code 7501), *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and Section 401 of the *Clean Water Act* (33 U.S.C. §1251 *et seq.*).

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 docking facility and dredging as described in Angola BTB's application complies with the Regulations administered by the Wetlands and Subaqueous Lands Section. As the Division of Water's TRM notes, however, the authorization of the proposed docking facility without dredging would likely result in a continual disturbance of

aquatic biota by the suspension of sediments by boat propellers, even with a limitation on vessel drafts, due to the shallowness of the site. Furthermore, the new dredging activity would provide relatively short-term environmental impacts. In addressing the future maintenance dredging cycle at this marina, a special condition has been included in the draft permits prepared in this matter to limit the maintenance dredging cycle to no more than once every four years, in order to allow for the recolonization of the benthic community.

Additional considerations were given by the Department's experts to the public concerns regarding vessel traffic and public safety, as well as the potential for water use conflicts between non-motorized water dependent activities and vessels utilizing Burton Prong. In reviewing the communities' demand for recreation through the a marina expansion, WSLs believes the proposed 24 slip expansion does little to alleviate the demand with a slip waiting list of over 400 individuals. Determining the carrying capacity of a waterbody in relation to recreational use and safety is an important consideration when evaluating whether public use of State waters is restricted. Thus, it is important to not only take into consideration the opinions set forth in the Division of Water's TRM, but also those stated in Chief Aydelotte's TRM as well.

A record search of violations, complaints, and accidents performed by Chief Aydelotte reveals that the Department has only experienced minor, "routine" incidents in the Angola BTB area, with "nothing alarming" found in his search that would set this particular area apart from other such areas. He further notes that historical evidence reveals increased vessel traffic/use in confined locations will cause an increase in such incidents. The area surrounding the Applicant's marina is currently a high traffic zone, with vessels leaving to enter the Herring Creek, Rehoboth Bay and points beyond, with eventual return to the home marinas. Of note is that Burton Prong in itself is not necessarily a high use area, but rather, a travel lane. Chief

Aydelotte opines the increase in slips will create more vessel travel, with impact on the ingress and egress of vessels in the channel area itself. This will increase wake issues more than anything else, which in turn will lead to an increase of calls for service within the Enforcement Section, which the Chief notes is already spread thin throughout Sussex County's waterways.

With regard to those comments requesting the establishment of a no wake area, Chief Aydelotte notes that this area is not posted slow/no wake. There are sufficient distances where the 100 ft. wake regulation allows increased speed through most of the Burton Prong length. While most vessels use courtesy when operating, vessel travel outside of the 100 ft. distance is not regulated. In order to establish a no wake area, the Department would have to initiate regulatory changes, or place (and then maintain) buoys and floats. Chief Aydelotte opines that, once this concession is made, it would start a "snowball effect" throughout Sussex County.

Chief Aydelotte concludes that, while he sees no need to deny this pending Application, the Applicant needs to acknowledge that wake issues will arise and increase with the marina expansion, as will vessel traffic. He further concludes that the Applicant will have to assume responsibility of increasing vessel traffic and increased wake issues, as officers on patrol may be delayed in response or sporadic in visibility to the area, given the current numbers of the Natural Resources Police (and their commitment to serve all of Delaware's boating community).

In order to address the above concerns regarding vessel traffic, public safety, and the potential for water use conflicts, as voiced by the Department's experts in both the Division of Water and the Natural Resources Police Unit of the Division of Fish and Wildlife, the following special condition has been included in the draft Marina Permit and draft Subaqueous Lands Lease:

No further marina expansion shall be authorized at the Angola By The Bay Marina until such time that the Department is able to open, amend, and adopt new Marina Regulations through the appropriate public process.

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, and has balanced those concerns with the right of the public to enjoy and use Delaware's natural resources. 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 marina expansion, and have recommended issuance of all permits necessary for completion of the same to the Applicant in this matter.

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 Application submitted by Angola By The Bay Property Owners Association. In conclusion, I recommend that all permits required for this proposed marina expansion, 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 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 Application of Angola By The Bay Property Owners Association, and of the public hearing held on October 25, 2017, and held said hearing to consider any public comment that may be offered on the Application, 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 TRMs of both the Division of Water and the Division of Fish and Wildlife;
4. The Department has carefully considered the factors required to be weighed in issuing all permits required by the Applicant's proposed marina expansion, and finds that the Record supports approval of the Application and the issuance of all required permits associated with same;
5. The Department shall issue the following permits to the Applicant: (1) a renewed and amended Marina Permit; (2) a Subaqueous Lands Permit; and (3) a renewed and amended Subaqueous Lands Lease 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/Appendices:

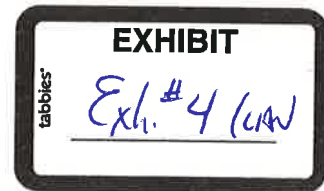
Appendix A: Division of Water TRM (02/08/18)

Appendix B: Division of Fish & Wildlife (Chief Aydelotte TRM (05/23/18)

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: Robert Haynes, Hearing Officer

Through: Virgil Holmes, Director, Division of Water *4/21/18*
Steven Smaler, Environmental Program Administrator, Division of Water *[Signature]*

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

Date: February 8, 2018

Subject: Angola By the Bay, Property Owners Association, Marina and Subaqueous Lands Permit Application, Water Quality Certification and Subaqueous Lands Lease Application

INTRODUCTION

On November 30, 2016, the Wetlands and Subaqueous Lands Section (WSLS), Division of Water, Department of Natural Resources and Environmental Control received an application from Coastal & Estuarine Research, Inc. submitted on behalf of Angola By the Bay, Property Owners Association (POA) to construct a major marina alteration to Angola By The Bay Marina by installing an additional 24 slips to an existing 130 slip marina and conduct new dredging in the proposed slip area in Burton Prong of Herring Creek located at the terminus of Marina Drive, Lewes, 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 placed on 45 day public notice on March 8, 2017 and a 20 day public notice on August 23, 2017. During the public notice periods, the WSLs received four written comments against the project. The objections stated that the waterbody is already inundated with boat traffic which leads to unsafe conditions for non-motorized water dependent activities such as paddle-boarding, canoeing and kayaking. The objections also included requests to reduce light pollution and to implement a no wake zone from Angola By the Bay Marina to the intersection of Burton and Hopkins Prong. At that time, no written comments were received in support of the application. The WSLs also reviewed the history of two previous public hearings held on marinas in this waterbody. The public hearing for Angola Beach Mobile Home Community resulted in Secretary's Order No. 86-SL-1 issued on May 19, 1986, which authorized the project but stipulated that no further expansion of docking facilities would be allowed and that boat ramps and on-land storage of vessels were feasible alternatives. The public hearing for The Woods on Herring Creek resulted in Secretary's Order No. 87-SL-1 and 87-WE-1 issued on October 14, 1987, which stipulated that new applications for subaqueous or wetlands permits involving marina projects would not be accepted in Herring Creek until further notice. The Marina Regulations were established in 1990 as a result of this Secretary's Order. In 1994, the WSLs received its first marina application in Herring Creek for expansion of the Angola By the Bay Marina since the establishment of the 1987 Secretary's Order. Objections were made by the public that the 1987 Secretary's Order had not been lifted so a formal memorandum was written that marina projects on Herring Creek could now be accepted based upon the adoption of the Marina Regulations in 1990. Based on the contentious history of marinas on Herring Creek and the current comments received, the WSLs determined that it was in the public's best interest to hold a public hearing. The announcement for a public hearing was placed on a 20 day public notice on September 27, 2017. After advertisement of the public hearing, there were a total of seven letters of objection to the project and one letter received in support of the application. The letter supporting the project was from the Angola By the Bay President who stated the expansion was necessary due to the community being comprised of 928 home sites.

The applicant, Angola By the Bay, POA, proposes to construct a major alteration to Angola By The Bay Marina by installing an additional 24 slips (Phase V) to a 130 slip marina, consisting of a 5 by 4 foot long section of fixed pier, a 4 by 12 foot long gangway, a 5 by 132 foot long floating pier, ten (10) 4 by 16 foot long floating finger piers, two (2) 4 by 20 foot long floating finger piers and to conduct new hydraulic dredging consisting of 800± cubic yards of material to a depth of -4 feet MLW in Burton Prong, at the terminus of Marina Drive and to dispose of the dredged material via pipeline to an upland confined disposal area west of Bridgeway Drive West Lewes, Sussex County, Delaware.

The public hearing was held on October 25, 2017. The public hearing was attended by WSLs staff, the applicant, his representatives, and over thirty individuals from the public. During the Public Hearing, the Hearing Officer, Robert P. Haynes, presented the exhibits of the public records from the Department. Subsequently, the applicant's consultant, Evelyn Maurmeyer, gave a presentation. She explained that there was a high demand from the

community for the marina expansion and submitted the following exhibits: a slip waiting list with 413 names on it, some of which have been on the list for 17 years; a petition with over 150 names of residents that are in favor of the proposed project; as well as 60 individual written comments in support of the project. By a show of hands, the majority of the public in attendance were in support of the project. Two individuals in attendance were against the project and Herb Miller said he was speaking on behalf of those opposed but couldn't attend the public hearing. His major concern was boaters who speed up and down the waterway and the shortage of marine police. He stated that boat wake energy adds monetary damage to waterfront homeowners who then have to install stronger shoreline stabilization techniques and is a danger to people involved in non-motorized water related activities. He requested for a no wake zone to be implemented from Angola By the Bay Marina to the Hometown Angola Beach, LLC Marina. Afterward, two other individuals from the Angola By the Bay community spoke about their own concerns with wake energy from speeding vessels but that those boaters could not simply be blamed on their community but were also from other waterfront property owners and the boating community. Mr. Haynes clarified that although DNREC regulates boat speeds, the Division of Fish & Wildlife holds that responsibility, not the WSLs. Mr. Haynes concluded by explaining the next steps in the process and adjourned the hearing shortly thereafter.

This Technical Response Memorandum (TRM) presents the Wetlands and Subaqueous Lands Section's (WSLS) findings regarding the above-referenced permit application, the public comment received during the public notice period and the testimony 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, 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.

All proposed activities within public subaqueous lands require a Subaqueous Lands Lease from the State of Delaware. When determining if an applicant should occupy those public lands, the Wetlands and Subaqueous Lands Section considers the potential effect on the public and the extent to which the public would benefit or suffer detriment from the project. 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.

Burton Prong is public subaqueous lands and is open for public use. The primary users are private property owners adjacent to Burton Prong, two major community marinas and the general public participating in boating, watersports, fishing, and crabbing. The proposed Phase V docking facility would be constructed adjacent to the existing Angola By the Bay marina facility. Navigation issues directly adjacent to the proposed Phase V docking facility should be minimal since the only nearby docking facility is the marina itself. As detailed below, Section 11.4.5 of the Marina Regulations further addresses public use impacts associated with navigation and vessel traffic.

During the public notice period, private waterfront owners along Burton Prong objected to the project, stating that light pollution from the existing marina facility impaired the aesthetic enjoyment of the creek and requested that improvements be made. In order to address their concerns, the draft Marina Permit includes a special condition to minimize light pollution and also requires a plan to implement the minimization of light pollution in the Operations and Maintenance Plan for the marina.

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

As stated above, the marina expansion is proposed for an additional 24 boat slips to a 130 slip marina on behalf of a private residential community of 928 homes. There is a high demand from the community for the marina expansion. During the public hearing, the consultant submitted a slip waiting list with 413 names on it - some of which have been on the list for 17 years. The applicant's primary objective and purpose is to address the requests of the community in terms of boat slip availability as the current marina facility does not meet the demand of the community.

The applicant has practiced avoidance of the use of additional subaqueous lands by the management of the marina slips. According to the draft Operations and Maintenance Plan, 44 of 130 slips are available for use on a rotating basis. The slips are rotated on a first come / first serve schedule which is used on a 14 days in and 5 days out basis. The remaining 86 slips are available for yearly rental with an expected waiting period of 15 years for new community members. Furthermore, the marina has a boat ramp available on-site in order to relieve the amount of slips needed on public subaqueous lands. There is also an area on uplands to store approximately 72 canoes and kayaks but there is no actual dry stack storage facility for motorized vessels. The development of a dry stack storage facility is problematic as much of the community has already been developed into a residential community.

The consolidation of vessel facilities into a marina is considered a minimization of possible activities in public subaqueous lands and a reduction of overall environmental impacts. The marina is currently providing water access to 928 units in the community with 130 wet slips.

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 applicant could continue to utilize the existing 130 slip marina and manage all of the slips on a rotational basis in order to satisfy more community members quickly. However, community members who have been waiting for a slip for several years would likely be upset if the management of slips were to be changed at this point. The resulting conflict over slips would not resolve the issue but could potentially make matters worse. Then again, construction of an additional boat ramp may alleviate some demand from community members.

The applicant is requesting a total of 154 slips for a community composed of 928 units. The proposed activity is currently minimized in comparison to the potential wishes of the residents of the community. In addition, the applicant is applying for one additional structure to serve the entire community which minimizes the potential impacts on subaqueous lands.

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.

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 requiring fish cleaning to be in accordance with DNREC's fish waste management policy, 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.

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 and currently contains another major marina and a multitude of private docks; the addition of a 24 slip docking facility should not have a significant adverse impact on the environment.

The proposed activity includes conducting new dredging around the Phase V docking facility which will result in relatively short-term harm to benthic organisms and other flora and fauna and their habitats. This is discussed in more detail in Section 4.9.2.2 below.

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 4,000 linear feet of waterfront property which it utilizes as a community marina with the following water dependent structures: three crabbing / fishing docks, a boat ramp and the current 130 slip marina docking facility. Navigation issues directly adjacent to the proposed Phase V docking facility should be minimal since the only nearby docking facility is the marina itself. In addition, access to the State navigation channel is not impaired since the structure will be approximately 30 feet away from the channel. Considerations for siting of the boat docking facility are discussed further in Sections 4.9.2.2, 4.9.2.5, 4.9.2.7 and 4.9.2.8 and 4.9.2.13 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.

As reasoned by the applicant, in order to make all of the proposed Phase V slips usable and so the floating portions of the structure do not lie on the substrate of the creek at low tide, the applicant is proposing to conduct new dredging around the proposed docking facility. The proposed new dredging is located on the open waters of Burton Prong and would not create a dead-end or poorly flushed lagoon.

Of significance is special condition no. 32 of the previously issued Marina Permit No. MP-207/12 which states the following: *"Structures shall be constructed to avoid dredging or filling and offer safe and convenient access to waters of navigable depth, with minimal impact on aquatic vegetation and wetlands, and without dead-end or poorly flushed lagoons. Dredging to obtain navigable water depths in conjunction with private residential boat docking facilities shall be avoided. In some cases, limitations on maximum vessel drafts may be necessary. Many of the near shore areas along Burton Prong do not have sufficient depths for vessel berthing and as such, no new docking facilities shall be authorized in the near shore areas that would require new dredging or increase the need for maintenance dredging in order to maintain adequate depths. No new dredging shall be authorized outside of previously authorized areas and maintenance dredging shall be minimized."*

The rationale behind this special condition was when the marina had previously applied for multiple phases of expansions; the applications had erroneously been processed as maintenance dredging when it should have been new dredging. The project scientist at the time, references Section 4.9.2.2 and Section 4.9.2.7 (discussed below) stating that the marina layout did not follow the regulations and alluded it would have been designed differently if these previous applications would have been applied toward new dredging. Upon aerial review of other marina facilities and similar waterbodies, this marina layout does stand out as being atypical.

One option would be to approve the docking facility without conducting the new dredging since there was no limitation in the special condition on expansion of the marina, just new dredging.

A portion of the structures would then have to be constructed as fixed rather than floating in order to not lie on the substrate of the creek. Based on the bathymetry submitted, the current depth range is from .5 to 2 feet below mean low water in the proposed area to be dredged. If not approved, a limitation on vessel drafts would have to be implemented so slip users would not disturb aquatic biota at the site by the suspension of sediments by boat propellers on a continual basis and would likely eliminate the use of any vessels. Also with this option, the applicant would likely request to conduct new dredging for the slips at a future time and would have a stronger argument based on the fact that the activity would allow an existing docking facility to be made more usable for a variety of vessels.

Alternatively, the new dredging could be authorized at the site based on evidence that there would be relatively short-term impacts to the environment. Best management practices are typical conditions when authorizing a dredging activity in order to minimize impacts to the environment. However, the practice of conducting new dredging in an area never previously dredged changes coastal morphology by altering natural sediment pathways, siltation patterns and affects coastal and aquatic flora and fauna. Specifically, the act of new dredging removes subtidal benthic species and communities never previously disturbed in such a significant way; therefore, a DNREC subject matter expert on benthic communities was consulted. He stated that in the headwaters of a creek such as this one; sediments are continually displaced to a point where a rich benthic community is harder to maintain and species diversity is low. In addition, as specified in the environmental siting considerations of the Siting & Design Study required by the Marina Regulations, there is no submerged aquatic vegetation on-site, the benthic community is degraded and the waterbody is mapped as being prohibited for shellfishing. If approved, a time of year restriction for dredging activity would be implemented in order to protect fish species that utilize the creek as a nursery area. Upon an evaluation of environmental considerations, the impacts associated with new dredging are minimal.

Conversely, the dredging activity could be denied based upon the above referenced special condition.

4.9.2.5 - ...In no case shall a structure extend more than 20 percent of the width of the waterbody, nor shall it extend seaward more than 250 feet, except under exceptional circumstances necessary to provide access for needed commerce.

In tidal waterbodies, 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 Phase V docking facility is proposed to extend from a cove area which naturally accretes sediments. Measured from this location, the waterbody is approximately 660 feet wide. The docking facility is proposed to extend 128 feet channelward of the mean low water mark which is less than 20 percent of the width of the waterbody. The length of the structure is justified to accommodate 24 vessels.

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, Burton Prong is a shallow waterbody located at the headwaters of Herring Creek. The proposed docking facility cannot eliminate the need for dredging by extending further channelward without exceeding 20 percent the width of the

waterbody. Violating the 20 percent rule would then pose a navigational hazard. In order to allow future slips to be made useable, the applicant is proposing new dredging. The proposed new dredging would allow the docking facility to not rest on the substrate of the creek and also provide sufficient height to allow light to penetrate underneath.

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 new dredging is to remove approximately 800 cubic yards of material to 4 feet below mean low water around the Phase V docking facility. In evaluating the conditions of the site, the State navigational channel along Burton Prong is much narrower than the channel markers show it to be and is only wide enough to allow passage of two vessels side by side. Bathymetry submitted from 1998 show the centerline of the State channel to be 4.8 feet below mean low water adjacent to the project area. More recent bathymetry from 2012 was also evaluated and the depths varied from 3.7 to 4.2 feet below mean low water adjacent to the project area. There is a need for maintenance dredging of the State navigational channel itself as an obvious change over the width and depth of the channel can be observed. Maintenance dredging of the State navigational channel will likely take place in the near future and the proposed depth is within the average 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 new dredging is for a boat docking facility in conjunction with a private residential community. This matter is discussed in detail in 4.9.2.2 above.

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 proposed new dredging would be conducted hydraulically which has a lower rate of sediment suspension when compared with mechanical dredging. In addition, best management practices such as conducting the activity with sound water pollution control practices and in accordance with the DNREC's Surface Water Quality Standards, are typical requirements when authorizing a dredging activity in order to minimize impacts to the environment. Disposal of the dredged material is proposed via hydraulic pipeline to a previously approved upland confined disposal area. In order to dewater properly, the material will be contained in the upland confined disposal area by earthen berms.

4.11.4 Prohibited Dredging Project. The following types of dredging projects are prohibited.

4.11.4.1 - Dredging of biologically productive areas, such as nursery areas, shellfish beds, and submerged aquatic vegetation, if such dredging will have a significant or lasting impact on the biological productivity of the area.

According to the DNREC, Division of Fish and Wildlife, Species Conservation and Research Program, there is a presence of young-of-the-year (YOY) Summer flounder (*Paralichthys dentatus*), YOY Striped bass (*Morone saxatilis*), and YOY American eel (*Anguilla rostrata*) which utilize Burton Prong as a nursery area. The new dredging of this biologically productive area is being requested at this time. The Species Conservation and Research Program submitted written comments recommending a time of year restriction of January 1st to August 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.

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.

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.

A Siting and Design (S&D) Study with associated documentation was submitted as part of the marina application. A request was made by the consultant to use published data representative of on-site environmental characteristics in lieu of site-specific field studies. Consultation between WSLs management and a DNREC staff subject matter expert on benthic communities determined that nearby published data representative of on-site environmental characteristics was acceptable. The submission of published water quality data provided 2 years of data from a nearby location approximately 0.3 miles away from the project area rather than having site-specific data from a one-time sampling event. In addition, the data submitted on benthic communities was located nearby in Hopkins Prong which supported findings that the DNREC subject matter expert on benthic communities had related.

11.3 Environmental siting considerations

The S&D Study explored environmental siting considerations as required. There is an area on uplands to store approximately 72 non-motorized watercrafts such as canoes and kayaks but no actual dry stack vessel storage facility. The development of a dry stack vessel storage facility is not practical since much of the community has already been developed into a residential community since the early 1980s. The consultant submitted water quality data from the University of Delaware Citizen Monitoring Program located at Station RB90, approximately 0.3 mile upstream of the project site representative of on-site conditions for the period of 7/18/2014 through 10/10/2016. Over this period of time, the dissolved oxygen levels were shown to have fallen. The water quality data also included records of very high levels of *Enterococcus* bacteria

(an indicator of fecal coliform concentrations) which accounts for the area already being prohibited for shellfish harvesting. In addition, submerged aquatic vegetation (SAVs) is not present at the marina site and the current water quality conditions do not support the potential for establishment or growth. Furthermore, the nearby benthic community in Hopkins Prong indicates a degraded condition based on a measure of species diversity, composition, biomass and abundance. The proposed expansion does not directly impact any State-regulated tidal wetlands. Efforts have previously been made to offset impacts at this marina by creating a living shoreline along approximately 1,300 linear feet of shoreline and yet environmental conditions on the waterbody have not improved due to multiple sources of non-point pollution. Specific time of year restrictions for the construction activity to protect fish species that utilize the creek as a nursery area were advised by DNREC, Division of Fish and Wildlife and implemented by the project scientist as a special condition of the draft authorizations.

11.4 Planning and design requirements

The S&D Study also explored planning and design siting considerations as required. The marina expansion is to be located on the open waters of Burton Prong which makes it optimal for maximum flushing. The shoreline is primarily stabilized with a riprap sill and vegetative stabilization. The applicant addressed the daily operations of the marina by submitting an Operations and Maintenance Plan for approval.

11.4.2.2 - ...Marinas shall not be permitted in areas that would require frequent maintenance dredging, resulting in harm to aquatic life and preventing the recolonization of benthic organisms. Such areas include those which would require maintenance dredging more often than once every four years.

The Phase V docking facility is proposed to extend from a cove area which naturally accretes sediments. A bathymetric survey for water depths was conducted at the site and presented water depths ranging from .5 to 2 feet below mean low water in the proposed area to be dredged. Conducting new dredging in water as shallow as 6 inches to a depth of 4 feet in order to create a navigable berthing area will likely silt in at an accelerated rate and require frequent maintenance dredging. If new dredging is to be permitted, future maintenance dredging shall be limited to the minimum necessary; likely resulting in unusable slips for an interim period but allowing for the recolonization of benthic communities. A special condition is included in the draft authorizations which limit the maintenance dredging cycle to no more than once every four years and to not exceed the depths of the receiving waterbody.

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, Burton Prong is public subaqueous lands and the waterfrontage is largely developed for residential land use. The primary concerns from private waterfront property owners along Burton Prong are public use impacts associated with vessel traffic and navigation. Multiple objectors to the project stated that the waterbody is currently inundated with boat traffic which leads to unsafe conditions for non-motorized water dependent activities such as paddle-boarding, canoeing and kayaking. Burton Prong is a shallow waterbody

with most of the vessels utilizing the narrow State channel for traveling to other areas of the Inland Bays. While other recreational users take advantage of the shallowness of the creek for non-motorized water dependent activities. This leads to a recreational water use conflict that has the potential of restricting use of State waters based on safety concerns of wake energy from high speeding vessels traveling through the channel. The objections requested to implement a no wake zone from Angola By the Bay Marina to the intersection of Burton and Hopkins Prong. However, the management of vessel speeds is under the jurisdiction of DNREC, Fish and Wildlife. The proposed marina expansion inherently will reduce the potential acreage for recreational use which adds to the issue of crowding and congestion. This in turn has the potential for increased risks of collision or other unsafe conditions due to vessel wake energy. However, allowing the expansion of 24 additional slips does not necessarily mean there will be 24 more vessels using the waterbody since there is an existing boat ramp at the marina. The use of the boat ramp by homeowners in the community adds an untold number of vessels to the water. Determining the carrying capacity of a waterbody in relation to recreational use and safety is an important consideration when evaluating whether public use of State waters is restricted.

11.4.5.2 - New marinas must be sited and/or designed, to the maximum extent practicable, to afford adequate protection against wakes caused by vessel traffic.

As discussed in 11.4.5.1 above, vessels utilize the State channel in Burton Prong in order to travel to larger waterbodies. These vessels traveling at high speeds create wake energy which contributes to shoreline erosion. Multiple objectors to the project blame vessel wakes from users of the marina as the main cause of shoreline erosion on their private waterfront property. One objector even stated that they lost 3 feet of shoreline over a period of 6 years which resulted in having to spend thousands in order to stabilize their shoreline. Although this is a valid concern, shoreline erosion is influenced from multiple sources of both human and natural means. A shoreline is a dynamic system resulting in erosion and accretion of sediments by natural coastal processes such as wind, waves, storm energy and movement of ice. Although having a marina nearby does add more vessels and therefore more wake energy; it is difficult to quantify just how much cost is added to private waterfront owners aside from the natural processes that takes place on a shoreline.

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. The final O&M plan must include a plan for light pollution, reduce seasonal wet storage of vessels, address pet waste disposal and incorporate the new marina layout. Pending associated subaqueous and marina authorizations for the construction activity, the final O&M plan must be submitted within six months of issuance and thereafter must be re-submitted for periodic re-approved every two years.

CONCLUSION

In reviewing the applicable statutes, regulations, and weighing public benefits against detriments, the WSLS finds that the construction of the docking facility and dredging described in the application for the Marina Permit, Subaqueous Lands Lease, Subaqueous Lands Permit and Water Quality Certification by Angola By the Bay, POA complies with the Regulations administered by the WSLS. To authorize the docking facility without dredging would likely result in a continual disturbance of aquatic biota by the suspension of sediments by boat propellers even with a limitation on vessel drafts due to the shallowness of the site. Furthermore, as discussed above, the new dredging activity would provide relatively short-term environmental impacts. In addressing the future maintenance dredging cycle at this marina; there is a special condition included in the draft authorizations which limits the maintenance dredging cycle to no more than once every four years in order to allow for the recolonization of the benthic community. With that said, the State 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 WSLS recognizes that there are concerns with conducting new dredging in public subaqueous lands and areas of shallow water.

In addition, there were concerns over vessel traffic and public safety and the potential for water use conflicts between non-motorized water dependent activities and vessels utilizing Burton Prong. In reviewing the communities' demand for recreation through a marina expansion; this 24 slip expansion does little to alleviate the demand with a slip waiting list of over 400 individuals. Determining the carrying capacity of a waterbody in relation to recreational use and safety is an important consideration when evaluating whether public use of State waters is restricted.

In order to address the above referenced concerns, the following special condition is included in the draft Marina Permit and draft Subaqueous Lands Lease: *"No further marina expansion shall be authorized at the Angola By the Bay Marina until such time that the Department is able to open, amend, and adopt new Marina Regulations through the appropriate public process."*

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

APPENDIX “B”



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF FISH & WILDLIFE
89 Kings Highway
Dover, DE 19901

NATURAL RESOURCES POLICE
OFFICE OF THE CHIEF



Phone: (302) 793-9913
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05/23/2018

Technical Response Memorandum

Ref: Boating safety concerns from vessel congestion near Angola by the Bay

Secretary Garvin,

It appears, through a record search, that we've only experience minor "routine" violations/complaints/accidents in the Angola by the Bay area. There is nothing alarming that would set it apart from other such areas. Though historical evidence has shown that with increased vessel traffic/use in confined locations those incidences have shown to dramatically increase.

This area is currently a high traffic zone with vessels leaving to enter the Herring Creek, Rehoboth Bay and points beyond with eventual return to the home marinas. Burton Prong in itself is not necessarily a high use area, but a travel lane. The increase in slips will create more vessel travel with impact on the ingress and egress of vessels in the channel area itself. This will increase wake issues more than anything else. This will lead to an increase of calls for service within the Enforcement Section that is already spread thin throughout Sussex County's waterways.

While there have been vessel collisions, there are not excessive incidents occurring, but any increase could lead to more incidents. The area is not posted slow no wake and there is sufficient distances that the 100' wake regulation allows increased speed through most of the Burton Prong length. Most vessels use courtesy when operating, but if outside the 100' distance, speed is not regulated. Having said that, response to calls for service will still be triaged and based on officer availability. Burton Prong, as all other areas on the Inland Bays, is seeing increased use through marina expansion, development and use. In order to establish a no wake area, the Department would have to initiate regulatory changes or place / maintain buoys/floats. Once this concession is made, it would start a snowball effect throughout the county. While I see no need to oppose the expansion, those requesting the permits will need to acknowledge that wake issues will arise and increase with the expansion as will vessel traffic. With our current numbers and commitment to serve all of our boating community Fish & Wildlife Natural Resources Police officers on patrol may be delayed in response or sporadic in visibility to the area. The applicants will have to assume responsibility of increasing vessel traffic and increased wake issues.

*We Bring You Delaware's Great Outdoors
through Science and Service*

Supporting documentation:

Title 7 § 3100 Boating Regulations

6.0 Vessel Speed
(Formerly BR-6)
(Penalty Section 23 Del.C. §2125)

6.1 Safe Boat Speed.

6.1.1 Every vessel shall at all times proceed at a safe speed so that she can take proper and effective action to avoid collision and be stopped within a distance appropriate to the prevailing circumstances and conditions.

6.1.2 The speed of all vessels on the waters of this State shall be limited to a Slow-No-Wake speed when within 100 feet of:

6.1.2.1 Any shoreline where "Slow-No-Wake" signs have been erected by the Department;

6.1.2.2 Floats;

6.1.2.3 Docks;

6.1.2.4 Launching ramps;

6.1.2.5 Marked swimming areas;

6.1.2.6 Swimmers; or

6.1.2.7 Anchored, moored, or drifting vessels.

6.1.3 No person shall operate a vessel at a rate of speed greater than is reasonable having regard to conditions and circumstances such as the closeness of the shore and shore installations, anchored or moored vessels in the vicinity, width of the channel, and if applicable, vessel traffic and water use.

6.2 Responsibility of Operator.

The operator of any vessel on the waters of this State shall be legally responsible for injuries, damages to life, limb, or property caused by his/her vessel or vessel wake.

Please let me know if I can assist you any further.

Respectfully,

Drew T. Aydelotte
Chief

Cc: Hearing Officer's Report



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

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-9943
FAX (302) 739-6304

Angola By the Bay, POA
c/o Mark Wolfe
33457 Woodland Circle
Lewes, DE 19958
Tax Parcels: 2-34-17.08-91.00
2-34-17.08-69.00, 2-34-17.08-144.00,
2-34-17.08-208.00

Marina Permit: MP-207/12(S1)
Associated Subaqueous Lease(s): SL-484/17
Associated Subaqueous Permit(s): SP-500/16
Water Quality Certification: WQ-500/16
Date of Issuance:
Amended Date: N/A

MARINA PERMIT SUPPLEMENTAL APPROVAL

GRANTED TO:

Angola By the Bay, POA

**TO OPERATE A ONE HUNDRED FIFTY-FOUR (154) SLIP MARINA
WITH THE FOLLOWING STRUCTURES:**

- **Phase I, composed of twenty-four (24) slips, to include:**
 - A 4 foot wide by 12 foot long gangway
 - A 5 foot wide by 140 foot long floating pier
 - Twelve (12) 4 foot wide by 16 foot long floating finger piers
- **Phase II, composed of twenty-four (24) slips, to include:**
 - A 5 foot wide by 16 foot long section of fixed pier
 - A 3 foot wide by 12 foot long gangway
 - A 5 foot wide by 141 foot long floating pier
 - Twelve (12) 4 foot wide by 16 foot long floating finger piers
- **Phase III, composed of twenty-four (24) slips, to include:**
 - An 8 foot wide by 14 foot long section of fixed pier
 - A 4 foot wide by 12 foot long gangway
 - A 5 foot wide by 140 foot long floating pier
 - Ten (10) 4 foot wide by 16 foot long floating finger piers
 - Two (2) 4 foot wide by 20 foot long floating finger piers
- **Phase IV, composed of fourteen (14) slips, to include:**
 - An 5 foot wide by 12 foot long section of fixed pier
 - A 3 foot wide by 15 foot long gangway
 - A 5 foot wide by 106 foot long floating pier
 - Seven (7) 4 foot wide by 16 foot long floating finger piers
- **Phase V, composed of twenty-four (24) slips, to include:**

Delaware's good nature depends on you!

- a 5 foot wide by 4 foot long section of fixed pier
- a 4 foot wide by 12 foot long gangway
- a 5 foot wide by 132 foot long floating pier
- Ten (10) 4 foot wide by 16 foot long floating finger piers
- Two (2) 4 foot wide by 20 foot long floating finger piers
- Marina Basin / Lagoon, composed of forty-four (44) slips, to include:
 - Twenty-two (22) 3 foot wide by 16 foot long floating finger piers with bracing
- A 17 foot wide by 12 foot long bridge
- Three (3) Crabbing / Fishing Docking Facilities, to include:
 - Boat Dock Drive Crabbing Dock, to include:
 - A 5 foot wide by 28 foot long fixed pier
 - A 3 foot wide by 10 foot long gangway
 - A 4 foot wide by 40 foot long floating pier
 - A 4 foot wide by 40 foot long floating dock
 - Marina Drive / Oak Street Crabbing Dock
 - An 8 foot wide by 24 foot long fixed pier
 - A 3 foot wide by 10 foot long gangway
 - A 6 foot wide by 50 foot long floating pier
 - An 8 foot wide by 24 foot long floating dock
 - Elmwood Avenue Crabbing Dock
 - A 4 foot wide by 11 foot long section of fixed pier
 - A 6 foot wide by 26 foot long fixed pier
 - A 3 foot wide by 6 foot long gangway
 - A 5 foot wide by 31 foot long floating pier
 - An 8 foot wide by 29 foot long floating dock
- A 14 foot wide by 55 foot long Boat Ramp, to include:
 - A 3 foot wide by 35 foot long convenience pier
 - with a 1 foot wide by 30 foot long fender
 - A 6 foot wide by 28 foot long convenience pier
 - with a 1 foot wide by 20 foot long fender

LOCATED:

**In Burton Prong of Herring Creek,
Angola By the Bay Marina,
At the terminus of Marina Drive,
Lewes, Sussex County, Delaware**

Pursuant to the provisions of 7 Del. C., Chapter 60, Environmental Control, Chapter 72, the Subaqueous Lands Act and the "Delaware Marina Regulations" and "Regulations Governing the Use of Subaqueous Lands" permission is hereby granted on this _____ day of _____ A.D. 2018, to operate the above-referenced marina in accordance with the approved plans (3 sheets) as approved on _____ by Secretary's Order No. _____, and the application dated November 21, 2016 and received by the Department on November 30, 2016, and with subsequent information received on July 19, 2017 and October 30, 2017.

WHEREAS, Angola By the Bay, POA, owner(s) of certain adjoining lands to Burton Prong of Herring Creek, has applied for permission to utilize the indicated structures for private use for the residents of the Angola By the Bay community; and;

WHEREAS, pursuant to the provisions of 7 Del. C., Chapters 60, Environmental Control, Chapter 72, the Subaqueous Lands Act, and the “Delaware Marina Regulations” and “Regulations Governing the Use of Subaqueous Lands”, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

NOW THEREFORE, this Permit is issued subject to the attached Subaqueous Permit General Conditions and the following Management Requirements and Special Conditions:

A. MANAGEMENT REQUIREMENTS

1. Changes of Permit Terms or Conditions

A report must be submitted to the Department describing any anticipated marina facility changes or expansions that would require modification of the terms and conditions of this Permit. The Department must approve changes prior to implementation.

2. Noncompliance Notification

In the case of noncompliance with State regulations and Permit conditions, the permittee shall report to the Department:

Orally within twenty-four (24) hours from the time the permittee became aware of any noncompliance which may endanger public health or the environment at (302) 739-9943 during normal working hours, or (800) 662-8802 after normal working hours, and In writing, as soon as possible, and within five (5) days of the date the permittee knows or should know of any noncompliance, unless this period is extended by the Department. This written notification shall contain:

- i. A description of the condition of noncompliance and its cause, and
- ii. The period of noncompliance, including exact dates and times, or if not yet corrected, the anticipated time the noncompliance is expected to continue and the steps being taken to reduce, eliminate and prevent recurrence of the non-complying condition.

3. Facilities Operation

The permittee shall at all times maintain in good working order, and operate as efficiently as possible, all systems and equipment used for construction activities or to achieve compliance with the terms and conditions of this Permit. The facility shall be operated in accordance

with the approved Marina's Operations and Maintenance Plan (O&M Plan). The approved O&M Plan shall be distributed to all marina tenants (and full time slip renters) and shall be posted in the harbor master's office or other prominent place within the marina.

4. Vessel Sewage Discharge:

Any marina providing other than transient berthing for any vessel containing a Type III marine sanitation device shall provide convenient access to an approved, fully operable and well maintained pumpout facility to receive wastes from vessel holding tanks or portable marine toilets (porta-potties).

The marina shall place signs, clearly visible to resident and transient vessels, to indicate the location and availability of the pumpout station and shall not preclude the use of the pumpout station by transient vessels. If the marina is not required to provide a pumpout facility, signage shall be posted to identify the location of the nearest facility.

The O&M Plan shall include the following information regarding vessel sewage in the boater rules and regulations section:

- i. Any discharge, by any means, of untreated or inadequately treated vessel sewage into or upon the waters of any marina, boat docking facility or tidal waters of the State is prohibited;
- ii. All vessels while on waters of the State shall comply with 33 U.S.C. §1322, Marine Sanitation Devices, as amended February 4, 1987.

5. Vessel Maintenance

This Permit does not authorize any major vessel maintenance or repair activities at the marina, whether by marina personnel, subcontractors or vessel owners. Only minor maintenance, such as washing, polishing and limited inboard painting is authorized. No pressure washing, bottom or hull scraping, sanding or painting, or major engine overhauls are authorized. All vessel maintenance must be managed to prevent discharge of pollutants into the environment. All materials used in maintenance and any wastes generated from maintenance activities must be stored, handled and disposed properly, and in compliance with Department regulations. Failure to properly handle vessel maintenance material or wastes may result in the revocation of this Permit.

6. Reporting a Discharge

Any person who causes or contributes to the discharge of a pollutant into State waters (particularly any oil or fuel spills), whether in excess of any conditions specified in this Permit or in the absence of a specific permit condition, shall report such an incident to the Department as required under 7 Del. C., §6028.

7. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact to the surface or ground waters of the State resulting from the activities regulated by this Permit. Additional or accelerated monitoring may be required if the potential for adverse impact is noted.

8. Right of Entry

The permittee shall allow the Secretary of the Department of Natural Resources and Environmental Control, or his authorized representatives, upon presentation of credentials, to:

- i. Enter upon the permittee's premises for inspection of any construction activities, run-off control devices, monitoring methods or equipment required in this Permit, or other structures or facilities necessary for compliance with the terms and conditions of this Permit, or to sample any discharge of pollutants; and
- ii. Have access to any records required to be kept under the terms and conditions of this Permit, for inspection and/or copying.

9. Transferability

This Permit may not be transferred without the prior written consent of the Department. Prior to the transfer of the property, the permittee shall obtain the written consent of the Department to transfer this Permit to the new property owner. Failure to obtain such written consent may result in the revocation of this Permit which would require the removal of all structures authorized by this Permit at the expense of the permittee.

This Permit may be transferable upon Department review and approval of the stated intentions, provided that a letter explaining the intention to transfer, accompanied by a copy of the Permit, is provided to the Department and signed by both the transferor and the transferee at least ten (10) days prior to the actual transfer. A new, updated Operations and Maintenance Plan must be submitted for Department review and approval whenever the marina ownership changes.

10. Permit Modification, Suspension or Revocation

This Permit may be modified, suspended or revoked in whole or in part during its term for cause including, but not limited to, the following:

- i. Violation of any terms or conditions of this Permit;
- ii. Obtaining this Permit by misrepresentation or failure to disclose fully all relevant facts, or if information and data provided by the applicant in good faith proves to be false;

- iii. Information that the permitted activity poses a threat to human health or welfare;
- iv. Failure by the permittee to obtain all other applicable Federal, State or local permits or approvals which may be required or failure to comply with such permits or approvals.

11. Liability Clause

Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under any State law or regulation.

12. Property Rights

The issuance of this Permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

13. Severability

The provisions of this Permit are severable, and if any provision of this Permit, or the application of any provision of this Permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this Permit, shall not be affected thereby.

B. SPECIAL CONDITIONS

1. Purpose:

This Marina Permit approval is granted for the explicit purpose of operating a one hundred fifty-four (154) slip marina for the residents of the Angola By the Bay community, as indicated on the approved plans. Any other use without prior approval shall constitute reason for this Permit being revoked.

2. Associated Subaqueous Lands Lease:

This Marina Supplemental Approval shall not be considered valid until the associated Subaqueous Lands Lease Approval SL-484/17 authorizing construction activity has been duly recorded in the office for the Recorder of Deeds in and for the appropriate County and a copy of the recorded Lease is returned to, and has been received by, the Department.

3. Marina Expansion:

No further marina expansion shall be authorized at the Angola By the Bay Marina until such time that the Department is able to open, amend, and adopt new Marina Regulations through the appropriate public process.

4. Maintenance Dredging Cycle

Future maintenance dredging shall be limited to the minimum necessary. The maintenance dredging cycle shall be limited to no more than once every four years and shall not exceed the depths of the receiving waterbody.

5. Supplemental Approval:

This Marina Supplemental Approval is an addendum to Marina Permit No. MP-207/12 granted to Angola By the Bay Property Owner's Association issued on February 15, 2013 and the original Marina Permit No. MPCA-004/95 issued on August 11, 1995. This Supplemental Approval shall be attached thereto and made a part thereof.

6. Approved Plans:

This Approval is in accordance with the plans and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.

7. As-Built Plans

Within ninety (90) days following the completion of construction as authorized by Subaqueous Lands Lease No. SL- 484/17, the permittee shall submit to the Department an "as-built" set of plans for the entire marina (including the three crabbing docks), bearing the seal and signature of a Professional Engineer registered in the State of Delaware. Exact dimensions and positions of all structural components must be clearly marked on the plans. This includes correcting the inconsistencies associated with the fenders on the boat ramp convenience piers, the crabbing docks, and the most channelward floating finger piers on Phase III. Upon submission and review, these as-built plans will then become the new approved plans for this Marina Permit authorization.

8. Operations and Maintenance Plan

Within six (6) months, the permittee shall submit a final Operations and Maintenance (O&M) Plan for Department review. Failure to submit the O&M Plan within the six (6) month time frame may be cause for enforcement action pursuant to 7 Del. C., Chapter 60. The permittee shall submit an updated O&M Plan for periodic review and re-approval to the Wetlands and Subaqueous Lands Section every 2 years thereafter. Failure to maintain an approved O&M Plan shall constitute reason for this Marina Permit being revoked.

9. Minimize Light Pollution

The marina shall reduce light pollution in order to not infringe upon the rights of the public interest on the aesthetic enjoyment of Burton Prong. A plan to minimize light pollution shall be included in the submission of the final O&M Plan for approval. A variety of methods can be used such as installing reflectors instead of lights, by installing lights that illuminate toward the ground instead of upwards, or by installing opaque shields on light fixtures.

10. Seasonal Wet Storage of Vessels

Vessels shall not be berthed in the waters of the marina year round. The seasonal wet storage of vessels shall be reduced to the maximum extent practicable by incorporating dates for autumn vessel removal and spring launching in the submission of the final O&M Plan.

11. Wetland Creation Area

The previously authorized wetland creation area (Subaqueous Lands Permit Approval No. SP-151/03 and SU-293/08) shall be maintained to compensate for impacts associated with the marina. If the wetland creation area is disturbed and maintenance activities are required, the permittee shall submit for approval any proposed activities to the Wetlands and Subaqueous Lands Section.

12. Channelward Encroachment

No portion of the structures authorized herein shall extend more than 20 percent the width of the waterbody as measured from mean low water at that location.

13. Vessel Sewage Discharge:

The marina must provide convenient access to an approved, fully operable and well maintained pumpout facility or dump station to receive wastes from vessel holding tanks or portable marine toilets (porta-potties).

The marina shall place signs, clearly visible to resident and transient vessels, to indicate the location and availability of the pumpout station and shall not preclude the use of the pumpout station by transient vessels. Such signs shall fully explain the procedures and rules for usage of the pumpout station.

14. Safety

Floation devices shall be provided at regular intervals throughout the marina to ensure the safety of marina users. Provisions for fire protection systems must be in compliance with the National Fire Protection Association (NFPA) 303, Fire Protection Standard for Marinas and Boatyards.

15. Dimensions of Decking:

No portion of the decking on the piers and docks authorized by this Permit shall exceed the width dimensions for those structures identified on the dimension plan of this Permit.

16. Corps of Engineers Permit:

The work authorized by this Permit is subject to the terms and conditions of the applicable Department of the Army Individual Permit.

IN WITNESS WHEREOF, I, Steven M. Smailer, the duly authorized representative of Shawn M. Garvin, Secretary of the Department of Natural Resources and Environmental Control, have hereunto set my hand this _____ day of _____, 2018.

By Steven M. Smailer, Environmental Program Administrator
the duly authorized representative of the Secretary of the
Department of Natural Resources and Environmental Control

Julie R. Molina, Environmental Scientist
Wetlands and Subaqueous Lands Section



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

GENERAL CONDITIONS

1. The permittee and contractor shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
2. The activities authorized herein shall be undertaken in accordance with the Permit conditions, the final stamped and approved plans, and with the information provided in the Permit application.
3. A copy of this Permit and the stamped approved plans shall be available on-site during all phases of construction activity.
4. The conditions contained herein shall be incorporated into any and all construction contracts associated with the construction authorized herein. The permittee and contractor are responsible to ensure that the workers executing the activities authorized by this Permit have full knowledge of, and abide by, the terms and conditions of this Permit.
5. No portion of the structure shall be constructed using creosote treated lumber.
6. No portion of the structure(s) authorized by this Permit shall exceed the dimensions for that structure identified on Page One of this Permit.
7. The activities authorized herein shall be conducted so as not to violate the State of Delaware's Surface Water Quality Standards in effect at the date of Permit authorization.
8. The issuance of this Permit does not constitute approval for any activities that may be required by any other local, state or federal government agency.
9. The issuance of this Permit does not imply approval of any other part, phase, or portion of any overall project the permittee may be contemplating.
10. This Permit authorizes only the activities described herein. Modifications to the project may require a supplemental approval from this office prior to the initiation of construction. A determination of the need for a supplemental approval will be made by this office pursuant to the permittee submitting written notification and revised plans indicating project changes. Failure to contact the Department prior to executing changes to the project shall constitute reason for this Permit being revoked.
11. The Contractors Completion Report shall be filled out and returned within 10 days of completion of the authorized work.
12. The permittee shall protect and hold the State of Delaware harmless from any loss, cost or damage resulting from the activities authorized herein.
13. Representatives of the Department of Natural Resources and Environmental Control shall be allowed to access the property to inspect all work during any phase of the construction and may conduct pre and post-construction inspections, collect any samples or conduct any tests that are deemed necessary.
14. The permittee shall maintain all authorized structures and activities in a good and safe condition.

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15. All construction materials, waste or debris associated with this activity shall be properly disposed of and contained at all times to prevent its entry into waters or wetlands. Construction materials shall not be stockpiled in subaqueous lands or wetlands.
16. The permittee and contractor shall employ measures during construction to prevent spills of fuels, lubricants or other hazardous substances. In the event of a spill, the permittee and contractor shall make every effort to stop the leak and contain the spill, and shall immediately contact the Hazardous Spill Response Team (HAZMAT) at 1-800-662-8802 and this office at (302) 739-9943. The permittee and contractor are responsible to comply with all directives to contain and clean up the spilled material(s) as stipulated by the HAZMAT team, and to restore the site as may be required by this office.
17. No construction shall occur after the construction expiration date identified on Page One of this Permit. The permittee may file a construction expiration date extension request of up to one (1) year if necessary to complete the authorized work. Such requests must be received by the Department at least thirty (30) days prior to the construction expiration date.

18. Any actions, operations or installations which are found by the Department to be contrary to the public interest may constitute reason for the ~~discontinuance and/or removal of said action,~~ operation or installation. Removal and restoration shall be at the expense of the permittee and/or upland property owner within thirty (30) days of receipt of written notice of revocation and demand for removal.
19. Disturbance of subaqueous lands or wetlands adjacent to the authorized structures or activities is prohibited unless specifically addressed in the special conditions of this Permit. Disturbance of subaqueous lands or wetlands in the path of construction activities shall be minimized. Any temporarily impacted subaqueous lands or wetlands shall be returned to pre-disturbance elevations and conditions.
20. This Permit is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the adjacent upland property, the permittee shall obtain the written consent of the Department to transfer the Permit to the new upland property owner. Failure to obtain such written consent may result in the revocation of this Permit and the removal of all structures authorized by this Permit at the expense of the permittee.
21. The permittee shall notify the Wetlands and Subaqueous Lands Section prior to the commencement of the work authorized by this Permit.
22. No portion of the structure shall be installed within ten (10) feet of the adjacent property lines.
23. No portion of the structure shall exceed 20% of the width of the water body as measured at mean low water.
24. The structures authorized by this Permit shall be constructed and maintained in a manner so as to assure water access to adjacent properties.
25. This Permit does not authorize any future repairs below the water line, or any additions or modifications to the structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.
26. Failure to comply with any of the terms or conditions of this Permit may result in enforcement action which could include the revocation of this Permit and subsequent restoration of the site to preconstruction conditions.

W.S.L.S.
APPROVED PLANS
PERMIT # MP-201/12 (S1)
DATE

CONSTRUCTION OF A 24-SLIP DOCKING FACILITY
(20' X 5' FIXED PIER; 12' X 4' GANGWAY; 132' X 5'
FLOATING MAIN PIER; TEN 16' X 4' AND TWO 20' X 4'
FLOATING FINGER PIERS), AND HYDRAULIC MAINTENANCE
DREDGING (800± C.Y. TO -4' MLW), WITH UPLAND DISPOSAL
IN: Burton Prong, Herring Creek
AT: Marina Drive, Angola by the Bay
Lewes, Sussex Co., DE 19958
Tax Map Parcel #2-34-17.08-91.00
APPLICANT: Angola by the Bay Property Owners Assoc.
DATE: November 21, 2016



Google Earth

feet
meters

300
100

NOV 30 2016

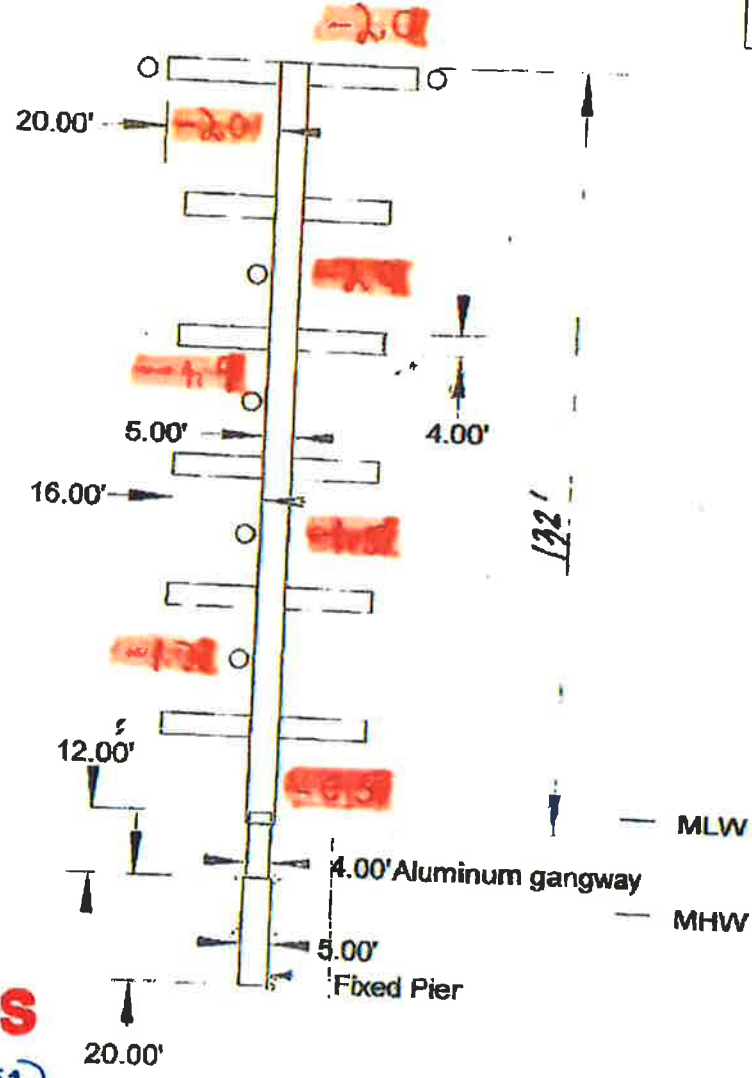
Figure 6. Site location on GoogleEarth® 2015 aerial photograph, adjacent to Burton Prong, Herring Creek off of Marina Drive, Angola by the Bay, Lewes, Sussex County, Delaware. Width of waterway = 660±. Applicant proposes to conduct 800± c.y. hydraulic maintenance dredging to -4' MLW; and to construct a 24-slip docking facility consisting of a 20' x 5' fixed pier, 12' x 4' aluminum gangway; 132' x 5' floating main pier; ten 16' x 4' and two 20' x 4' floating finger piers.

Depth readings - MLW 7/10/17

Herring Creek
EBB~Flow



CONSTRUCTION OF A 24-SLIP DOCKING FACILITY
(20' X 5' FIXED PIER; 12' X 4' GANGWAY; 132' X 5'
FLOATING MAIN PIER; TEN 16' X 4' AND TWO 20' X 4'
FLOATING FINGER PIERS), AND HYDRAULIC MAINTENANCE
DREDGING (800± C.Y. TO -4' MLW), WITH UPLAND DISPOSAL
IN: Burton Prong, Herring Creek
AT: Marina Drive, Angola by the Bay
Lewes, Sussex Co., DE 19958
Tax Map Parcel #2-34-17-08-91.00
APPLICANT: Angola by the Bay Property Owners Assoc.
DATE: November 21, 2016

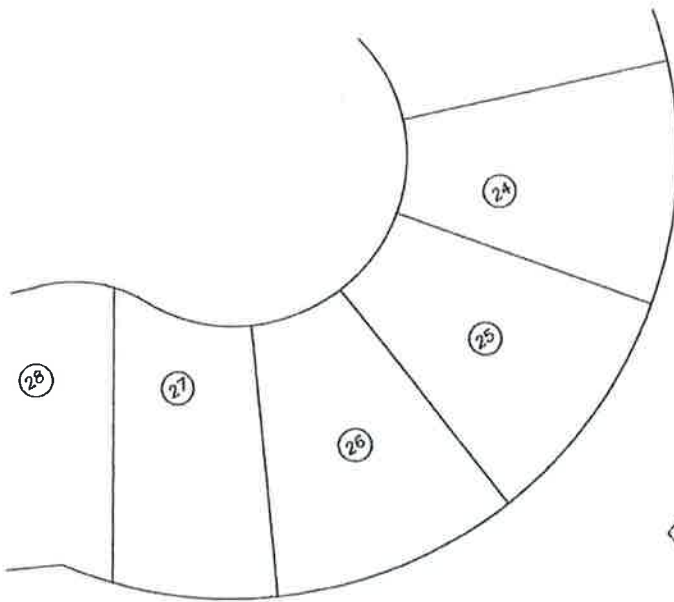


W.S.L.S.
APPROVED PLANS
PERMIT # MP-207/12(51)
DATE _____
(SEE PERMIT CONDITIONS)

Proposed Floating Dock
Phase Five ABTB Marina
Angola By The Bay
Lewes, DE

PRECISION MARINE CONSTRUCTION INC.
202 Woodbridge Hills
Rehoboth Beach, DE 19971
Scale: 1" = 30' Date: 08-25-2016 RBW

Figure 8. Plan view of proposed marina structure (prepared by Precision Marine



APPROXIMATE LOW WATER LINE

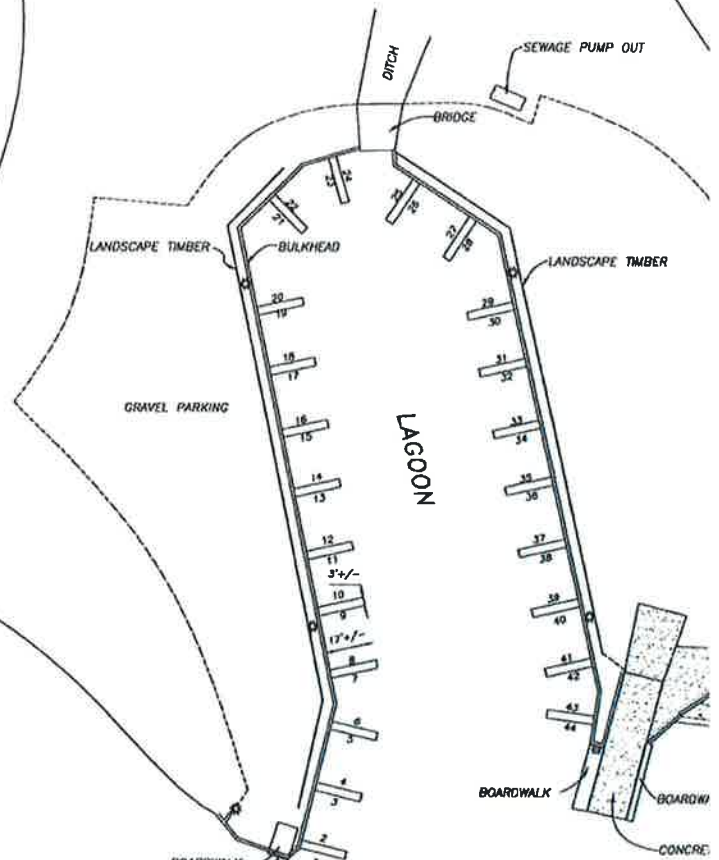
W.S.L.S.
APPROVED PLANS
PERMIT # MP-201/12 (S1)
DATE _____
(SEE PERMIT CONDITIONS)

LAT: 38°39'53.3314"
 LON: 75°10'45.3159"

LAT: 38°39'53.0593"
 LON: 75°10'44.9946"

LAT: 38°39'
 LON: 75°10'

BURTON PRONG OF



LEGEND:





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

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-9943
FAX (302) 739-6304

Angola By the Bay, POA
c/o Mark Wolfe
33457 Woodland Circle
Lewes, DE 19958
Tax Parcel: 2-34-17.08-91.00
Disposal Site Tax Parcel: 2-34-11.20-128.00

Subaqueous Lands Permit: SP-500/16
Water Quality Certification: WQ-500/16
Associated Subaqueous Lease(s): SL-484/17
Associated Marina Permit(s): MP-207/12(S1)
Date of Issuance:
Construction Expiration Date:
Amended Date: N/A

SUBAQUEOUS LANDS PERMIT AND WATER QUALITY CERTIFICATION

GRANTED TO:

Angola By the Bay, POA

TO CONDUCT NEW HYDRAULIC DREDGING:

**Approximately 800 cubic yards of material to a
depth of 4 feet below Mean Low Water (MLW)**

LOCATED ON PUBLIC SUBAQUEOUS LANDS:

**In Burton Prong of Herring Creek,
Angola By the Bay Marina,
At the terminus of Marina Drive,
Lewes, Sussex County, Delaware**

TO DISPOSE OF THE DREDGED MATERIAL:

**Via hydraulic pipeline to an existing confined disposal area
located on tax parcel # 2-34-11.20-128.00,
west of Bridgeway Drive West,
Lewes, Sussex County, DE**

Pursuant to the provisions of 7 Del. C., §7205, and the Department's Regulations Governing the Use of Subaqueous Lands, Section 6003, the Department's Regulations Governing the Control of Water Pollution and Section 401 of the Clean Water Act permission is hereby granted on this day of _____ A.D. 2018, to construct the above-referenced project in accordance with the approved plans (6 sheets), as approved on _____ by Secretary's Order No. _____; and the application dated November 21, 2016, and received by this Division on _____

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November 30, 2016 and with subsequent information received on July 19, 2017 and October 30, 2017.

WHEREAS, Angola By the Bay, POA, owner(s) of certain adjoining lands to the Burton Prong of Herring Creek, has applied for permission to perform the indicated work for private use for the residents of the Angola By the Bay community, and;

WHEREAS, pursuant to the provisions of 7 Del. C., §7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

WHEREAS, in accordance with Section 401 of the Clean Water Act, 33 U.S.C. Section 1341 and 7 Del. C., Chapter 60, the State of Delaware, by and through the Department of Natural Resources and Environmental Control, certifies that the permitted activity will be conducted in a manner which will not violate the applicable water quality standards of the State of Delaware, subject to the terms and conditions of this approval.

NOW THEREFORE, this Permit/Certification is issued subject to the attached Subaqueous Lands Permit General Conditions, Water Quality Certification General Conditions, and the following special conditions:

SPECIAL CONDITIONS

1. This approval is in accordance with the plans and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.
2. This permit is granted for the purpose of creating navigable water depths, as stated in the permit application. Any other use without prior approval shall constitute reason for this Permit being revoked.
3. Future maintenance dredging shall be limited to the minimum necessary. The maintenance dredging cycle shall be limited to no more than once every four years and shall not exceed the depths of the receiving waterbody.
4. The primary species of concern for this project area are young-of-the-year (YOY) Summer flounder (*Paralichthys dentatus*), YOY Striped bass (*Morone saxatilis*), and YOY American eel (*Anguilla rostrata*) which utilize the creek as a nursery area. Reference the chart below for specific time-of-year restrictions (depicted in gray) when no in water work shall take place.

	January	February	March	April	May	June	July	August	September	October	November	December
YOY Fish Species	1 st							30 th				

5. There shall be no movement of equipment within subaqueous lands and wetlands not specifically authorized by this Permit. Any areas disturbed pursuant to this authorization, other than the authorized permanent impact areas, shall be returned to pre-construction conditions/elevations and appropriately stabilized and/or vegetated. Disturbance of wetlands adjacent to the permitted construction by burning, cutting, herbicide treatments, mechanical methods or any other method is prohibited. There shall be no stockpiling of construction material in subaqueous lands or wetlands.
6. This Permit shall be valid for a three (3) year period and authorizes one new dredging event of up to 800 cubic yards of material during the dredging event.
7. The permittee shall perform the authorized dredging using hydraulic dredging. The post dredging water depth shall not exceed -4.0 feet at mean low water. A post-dredging bathymetric survey of the site, showing depths relative to mean low water shall be submitted to this office within 60 days of the completion of the dredging.
8. In accordance with 68 Delaware Laws, Volume 1, Chapter 86, Section 14, the new dredging activity on public subaqueous lands is subject to a fee of \$1.50 per cubic yard of material dredged.
9. The volume of the dredge material subject to the fee shall be determined by submitting a post bathymetric survey. The survey shall be submitted to the Wetlands and Subaqueous Lands Section within 60 days of the completion of dredging for review and approval of the calculated volume. Payment of the fee, (made payable to the State of Delaware), shall be submitted within 30 days of the receipt of the approval letter from the Wetlands and Subaqueous Lands Section.
10. No future dredging projects shall be granted if the applicant fails to comply with special condition numbers 8 and 9, this may also constitute a reason not to grant any additional lease renewals on public subaqueous lands.
11. This Permit/Certification authorizes the containment of the dredged material within Tax Parcel 2-34-11.20-128.00 only. Any further handling (including, but not limited to permanent capping or burial, transportation, removal of the sediment or re-grading) requires prior notification to the Department. Additional authorization may be required at that time depending upon the proposed use.
12. Prior to the commencement of the dredging operation, the disposal area shall be examined to ensure that it is in good condition, and repairs shall be completed if necessary. The permittee is also responsible to effectively maintain the disposal site during dredging and de-watering to avoid failure of the facility and to prevent the entrance of the dredged material into any surface water or wetland.
13. A minimum freeboard of two (2) feet, measured vertically between the retained materials and water, and the top of the adjacent confining embankment, shall be maintained at all times.
14. All dredging and disposal shall be conducted in a manner consistent with sound conservation and water pollution control practices.

15. All pipelines shall be kept in good condition at all times and any leaks or breaks shall be promptly and properly repaired.
16. The pipeline placed in Burton Prong shall be placed in a manner so that they do not impede navigation or cause hazardous conditions.
17. All waters disturbed during construction activities, except for those intended to be permanently altered for the authorized dredging, shall be restored to pre-disturbance conditions to include bank elevations and slopes, waterway and wetland surface elevations and contours, and wetland vegetation and densities.
18. The work authorized by this Permit is subject to the terms and conditions of the applicable Department of the Army Individual Permit.

IN WITNESS WHEREOF, I, Steven M. Smailer, the duly authorized representative of Shawn M. Garvin, Secretary of the Department of Natural Resources and Environmental Control, have hereunto set my hand this _____ day of _____, 2018.

By Steven M. Smailer, Environmental Program Administrator
the duly authorized representative of the Secretary of the
Department of Natural Resources and Environmental Control

Julie R. Molina, Environmental Scientist
Wetlands and Subaqueous Lands Section



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

GENERAL CONDITIONS

1. The permittee and contractor shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
2. The activities authorized herein shall be undertaken in accordance with the Permit conditions, the final stamped and approved plans, and with the information provided in the Permit application.
3. A copy of this Permit and the stamped approved plans shall be available on-site during all phases of construction activity.
4. The conditions contained herein shall be incorporated into any and all construction contracts associated with the construction authorized herein. The permittee and contractor are responsible to ensure that the workers executing the activities authorized by this Permit have full knowledge of, and abide by, the terms and conditions of this Permit.
5. No portion of the structure shall be constructed using creosote treated lumber.
6. No portion of the structure(s) authorized by this Permit shall exceed the dimensions for that structure identified on Page One of this Permit.
7. The activities authorized herein shall be conducted so as not to violate the State of Delaware's Surface Water Quality Standards in effect at the date of Permit authorization.
8. The issuance of this Permit does not constitute approval for any activities that may be required by any other local, state or federal government agency.
9. The issuance of this Permit does not imply approval of any other part, phase, or portion of any overall project the permittee may be contemplating.
10. This Permit authorizes only the activities described herein. Modifications to the project may require a supplemental approval from this office prior to the initiation of construction. A determination of the need for a supplemental approval will be made by this office pursuant to the permittee submitting written notification and revised plans indicating project changes. Failure to contact the Department prior to executing changes to the project shall constitute reason for this Permit being revoked.
11. The Contractors Completion Report shall be filled out and returned within 10 days of completion of the authorized work.
12. The permittee shall protect and hold the State of Delaware harmless from any loss, cost or damage resulting from the activities authorized herein.
13. Representatives of the Department of Natural Resources and Environmental Control shall be allowed to access the property to inspect all work during any phase of the construction and may conduct pre and post-construction inspections, collect any samples or conduct any tests that are deemed necessary.
14. The permittee shall maintain all authorized structures and activities in a good and safe condition.

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15. All construction materials, waste or debris associated with this activity shall be properly disposed of and contained at all times to prevent its entry into waters or wetlands. Construction materials shall not be stockpiled in subaqueous lands or wetlands.
16. The permittee and contractor shall employ measures during construction to prevent spills of fuels, lubricants or other hazardous substances. In the event of a spill, the permittee and contractor shall make every effort to stop the leak and contain the spill, and shall immediately contact the Hazardous Spill Response Team (HAZMAT) at 1-800-662-8802 and this office at (302) 739-9943. The permittee and contractor are responsible to comply with all directives to contain and clean up the spilled material(s) as stipulated by the HAZMAT team, and to restore the site as may be required by this office.
17. No construction shall occur after the construction expiration date identified on Page One of this Permit. The permittee may file a construction expiration date extension request of up to one (1) year if necessary to complete the authorized work. Such requests must be received by the Department at least thirty (30) days prior to the construction expiration date.
18. Any actions, operations or installations which are found by the Department to be contrary to the public interest may constitute reason for the discontinuance and/or removal of said action, operation or installation. Removal and restoration shall be at the expense of the permittee and/or upland property owner within thirty (30) days of receipt of written notice of revocation and demand for removal.
19. Disturbance of subaqueous lands or wetlands adjacent to the authorized structures or activities is prohibited unless specifically addressed in the special conditions of this Permit. Disturbance of subaqueous lands or wetlands in the path of construction activities shall be minimized. Any temporarily impacted subaqueous lands or wetlands shall be returned to pre-disturbance elevations and conditions.
20. This Permit is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the adjacent upland property, the permittee shall obtain the written consent of the Department to transfer the Permit to the new upland property owner. Failure to obtain such written consent may result in the revocation of this Permit and the removal of all structures authorized by this Permit at the expense of the permittee.
21. The permittee shall notify the Wetlands and Subaqueous Lands Section prior to the commencement of the work authorized by this Permit.
22. No portion of the structure shall be installed within ten (10) feet of the adjacent property lines.
23. No portion of the structure shall exceed 20% of the width of the water body as measured at mean low water.
24. The structures authorized by this Permit shall be constructed and maintained in a manner so as to assure water access to adjacent properties.
25. This Permit does not authorize any future repairs below the water line, or any additions or modifications to the structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.
26. Failure to comply with any of the terms or conditions of this Permit may result in enforcement action which could include the revocation of this Permit and subsequent restoration of the site to preconstruction conditions.



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

GENERAL CONDITIONS

1. The permittee and contractor shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
2. The activities authorized herein shall be undertaken in accordance with the all conditions, the final stamped and approved plans, and with the information provided in the application.
3. A copy of this Certification and the stamped approved plans shall be available on-site during all phases of construction activity.
4. The conditions contained herein shall be incorporated into any and all construction contracts associated with the construction authorized herein. The permittee and contractor are responsible to ensure that the workers executing the activities authorized by this Certification have full knowledge of, and abide by, the terms and conditions of this Certification.
5. No portion of the structure shall be constructed using creosote treated lumber.
6. No portion of the structure(s) authorized by this Certification shall exceed the width dimension for that structure identified on Page One of this Certification.
7. The activities authorized herein shall be conducted so as not to violate the State of Delaware's Surface Water Quality Standards in effect at the date of Certification.
8. The issuance of this Certification does not constitute approval for any activities that may be required by any other local, state or federal government agency.
9. The issuance of this Certification does not imply approval of any other part, phase, or portion of any overall project the permittee may be contemplating.
10. This Certification authorizes only the activities described herein. Modifications to the project may require a supplemental approval from this office prior to the initiation of construction. A determination of the need for a supplemental approval will be made by this office pursuant to the permittee submitting written notification and revised plans indicating project changes. Failure to contact the Department prior to executing changes to the project shall constitute reason for this Certification being revoked.
11. The Contractors Completion Report shall be filled out and returned within 10 days of completion of the authorized work.
12. The permittee will protect and hold the State of Delaware harmless from any loss, cost or damage resulting from the construction or use of said structures.
13. Representatives of the Department of Natural Resources and Environmental Control shall be allowed to access the property to inspect all work during any phases of the construction and may conduct post-construction compliance inspections, collect any samples or conduct any tests that are deemed necessary.
14. The permittee shall maintain all authorized structures and activities in a good and safe condition.

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15. All construction materials, waste or debris associated with this activity shall be properly disposed of and contained at all times to prevent its entry into waters or wetlands. Construction materials shall not be stockpiled in subaqueous lands or wetlands.
16. The permittee or their contractor shall employ measures during construction to prevent spills of fuels, lubricants or other hazardous substances. In the event of a spill, the permittee or their contractor shall make every effort to stop the leak and contain the spill, and shall immediately contact the Hazardous Spill Response Team (HAZMAT) at 1-800-662-8802 and this office at (302) 739-9943. The permittee and their contractor are responsible to comply with all directives to contain and clean up the spilled material(s) as stipulated by the HAZMAT team, and to restore the site as may be required by this office.
17. No construction shall occur after the construction expiration date identified on Page One of this Certification. The permittee may file an extension request of up to one (1) year if necessary to complete the authorized work. Such requests must be received by the Department at least thirty (30) days prior to the construction expiration date.
18. Any actions, operations or installations which are found by the Department to be contrary to the public interest may constitute reason for the discontinuance and/or removal of said action, operation or installation. Removal and restoration shall be at the expense of the permittee and/or upland property owner within thirty (30) days of receipt of written notice of revocation and demand for removal.
19. Disturbance of subaqueous lands or wetlands adjacent to the authorized structures or activities is prohibited unless specifically addressed in the special conditions of this Certification. Disturbance of subaqueous lands or wetlands in the path of construction activities shall be minimized. Any temporarily impacted subaqueous lands or wetlands shall be returned to pre-disturbance elevations and conditions.
20. This Certification is personal but may be transferred provided the permittee provides prior notice to the Department of the intent to transfer and the new property owner provides appropriate documentation to substantiate ownership of the adjacent upland property and/or the structures authorized herein. Failure to transfer this Certification to a new owner may result in the revocation of the Certification and the removal of all structures authorized by this Certification at the expense of the permittee.
21. The permittee shall notify the Wetlands and Subaqueous Lands Section prior to the commencement of the work authorized by this Certification.
22. This Certification is subject to the terms and conditions contained in any easement, license or lease that may have been granted by the State or any political subdivision, board, commission or agency of the State which may apply to the premises where the project authorized herein is located.
23. Erosion and sediment control measures shall be implemented in accordance with the specifications and criteria in the current Delaware Erosion and Sediment Control Handbook so as to minimize entry and dispersal of sediment and other contaminants in surface waters.
24. Failure to comply with any of the terms or conditions of this Certification may result in enforcement action, which could include the revocation of this Certification, and subsequent restoration of the site to preconstruction conditions.

APPROVED PLANS

PERMIT # SP-500/16; WQ-500/16

DATE

(SEE PERMIT CONDITIONS)

CONSTRUCTION OF A 24-SLIP DOCKING FACILITY
(20' X 5' FIXED PIER; 12' X 4' GANGWAY; 132' X 5'
FLOATING MAIN PIER; TEN 16' X 4' AND TWO 20' X 4'
FLOATING FINGER PIERS), AND HYDRAULIC MAINTENANCE
DREDGING (800± C.Y. TO -4' MLW), WITH UPLAND DISPOSAL
IN: Burton Prong, Herring Creek

AT: Marina Drive, Angola by the Bay

Lewes, Sussex Co., DE 19958

Tax Map Parcel #2-34-17.08-91.00

APPLICANT: Angola by the Bay Property Owners Assoc.

DATE: November 21, 2016



Google Earth

feet 300
meters 100

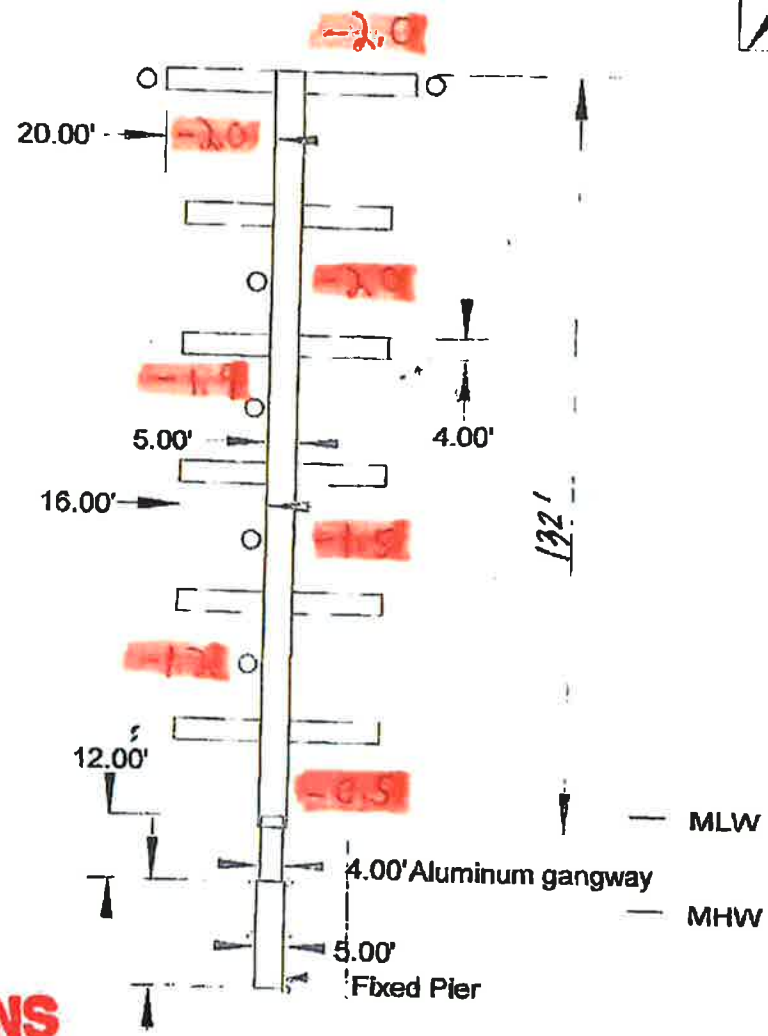
Figure 6. Site location on GoogleEarth® 2015 aerial photograph, adjacent to Burton Prong, Herring Creek off of Marina Drive, Angola by the Bay, Lewes, Sussex County, Delaware. Width of waterway = 660±. Applicant proposes to conduct 800± c.y. hydraulic maintenance dredging to -4' MLW; and to construct a 24-slip docking facility consisting of a 20' x 5' fixed pier, 12' x 4' aluminum gangway; 132' x 5' floating main pier; ten 16' x 4' and two 20' x 4' floating finger piers.

Depth Readings - MLW 7/10/17

Herring Creek
EBB~Flow



CONSTRUCTION OF A 24-SLIP DOCKING FACILITY
(20' X 5' FIXED PIER; 12' X 4' GANGWAY; 132' X 5'
FLOATING MAIN PIER; TEN 16' X 4' AND TWO 20' X 4'
FLOATING FINGER PIERS), AND HYDRAULIC MAINTENANCE
DREDGING (800± C.Y. TO -4' MLW), WITH UPLAND DISPOSAL
IN: Burton Prong, Herring Creek
AT: Marina Drive, Angola by the Bay
Lewes, Sussex Co., DE 19958
Tax Map Parcel #2-34-17.08-91.00
APPLICANT: Angola by the Bay Property Owners Assoc.
DATE: November 21, 2016



W.S.L.S.
APPROVED PLANS
PERMIT # SP-500/16 ; WQ-500/16
DATE _____
(SEE PERMIT CONDITIONS)

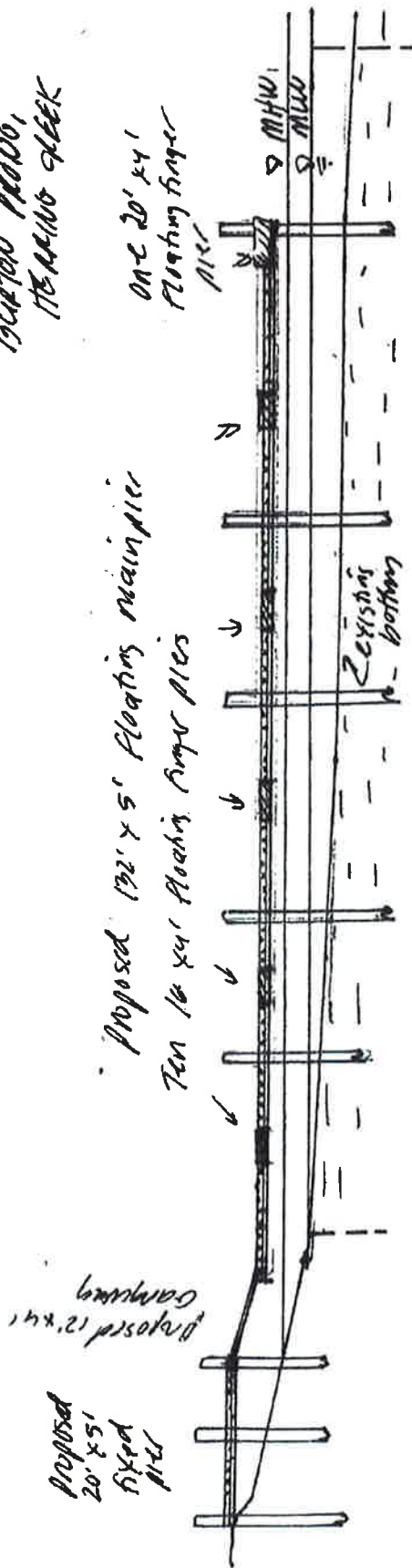
Proposed Floating Dock
Phase Five ABTB Marina
Angola By The Bay
Lewes, DE

PRECISION MARINE CONSTRUCTION INC.
202 Woodbridge Hills
Rehoboth Beach, DE 19971
Scale: 1" = 30' Date: 08-25-2018 RBW

Figure 8. Plan view of proposed marina structure (prepared by Precision Marine)

CONSTRUCTION OF A 24-SLIP DOCKING FACILITY
 (20' X 5' FIXED PIER; 12' X 4' GANGWAY; 132' X 5'
 FLOATING MAIN PIER; TEN 16' X 4' AND TWO 20' X 4'
 FLOATING FINGER PIERS), AND HYDRAULIC MAINTENANCE
 DREDGING (800± C.Y. TO -4' MLW), WITH UPLAND DISPOSAL
 IN: Burton Prong, Herring Creek
 AT: Marina Drive, Angola by the Bay
 Lewes, Sussex Co., DE 19958
 Tax Map Parcel #2-34-17.08-91.00
 APPLICANT: Angola by the Bay Property Owners Assoc.
 DATE: November 21, 2016

(a) DOCKING FACILITY CROSS-SECTION (1" = 20' ±)



(b) DREDGING CROSS-SECTION (DE = 4' ±)

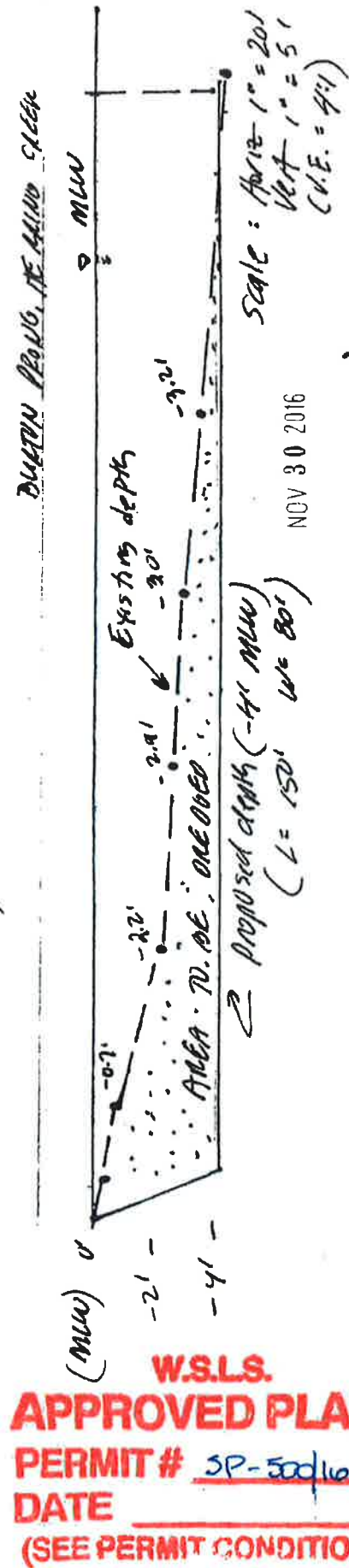


Figure 9. Cross-section sketch of proposed marina structure. Existing MLW and proposed depths also depicted.



Addresses / Parcels

□ Tax Parcels

Council Districts

□ Fire Districts

County District 01

County District 02

County District 03

County District 04

County District 05

□ County Boundaries

Schools/Libraries

▲ School Buildings (Various)

☞ School Library

☞ Public Library

☞ Special Library

☞ DOE School Districts

☞ DOE Vo Tech School Districts

Hydrology

~ Streams / Rivers

■ Lakes, Ponds, Bays

Flood Zones

■ 0.2% Annual Chance

■ Flood Hazard

□ A

□ AE

□ AO

■ Open Water

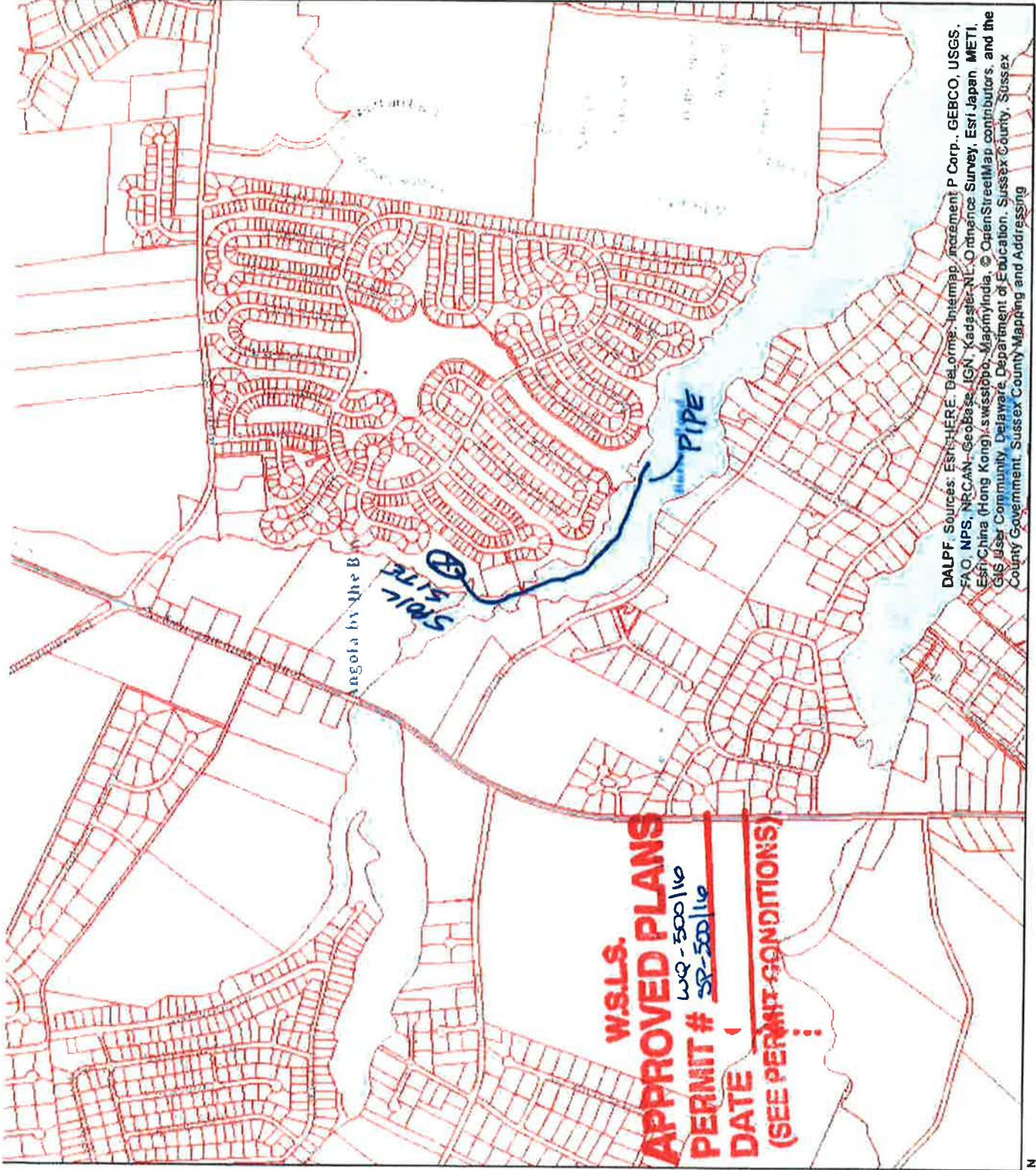
■ VE

Public: Protected Lands

■ Municipalities

■ Communities

■ Boundaries State County



Sussex County Map

Sussex County Mapping

CONSTRUCTION OF A 24-SLIP DOCKING FACILITY (20' X 5' FIXED PIER; 12' X 4' GANGWAY; 132' X 5' FLOATING MAIN PIER; TEN 16' X 4' AND TWO 20' X 4' FLOATING FINGER PIERS), AND HYDRAULIC MAINTENANCE DREDGING (800± C.Y. TO -4' MLW), WITH UPLAND DISPOSAL
 IN: Burton Prong, Herring Creek
 AT: Marina Drive, Angola by the Bay
 Lewes, Sussex Co., DE 19958
 Tax Map Parcel #2-34-17.08-91.00
 APPLICANT: Angola by the Bay Property Owners Assoc.
 DATE: November 21, 2016

Layer Visibility

☒ Addresses/Parcels

☒ 911 Addresses

Id?

☒ Parcel Labels

☒ ☐ Parcels

☒ Id?

☒ Annotation

☒ County Districts

☒ Schools/Libraries

☒ Hydrology

☒ Tax Index

☒ Transportation

☒ Statewide

Search Parcels:

HELP! (Tax ID) 234-17.08-91.00

Selected Features:

Parcels (1)

1) 234-11.20-128.00

Zoom

PIN/WASSEMENT UNIT	234-11.20-128.00
Name	ANGOLA BY THE BAY, PROPERTY OWNERS ASSOC
Mailing Address	33457 WOODLAND CIR
CITY	LEWES
STATE	DE
ZIP CODE	19958
DESCRIPTION	ANGOLA BY THE BAY
DESCRIPTION2	COMM AREA 10.86 ACS.
DESCRIPTION3	*10,850*
COUNCILMAN	4
FIRE	86

Selected Features (1)

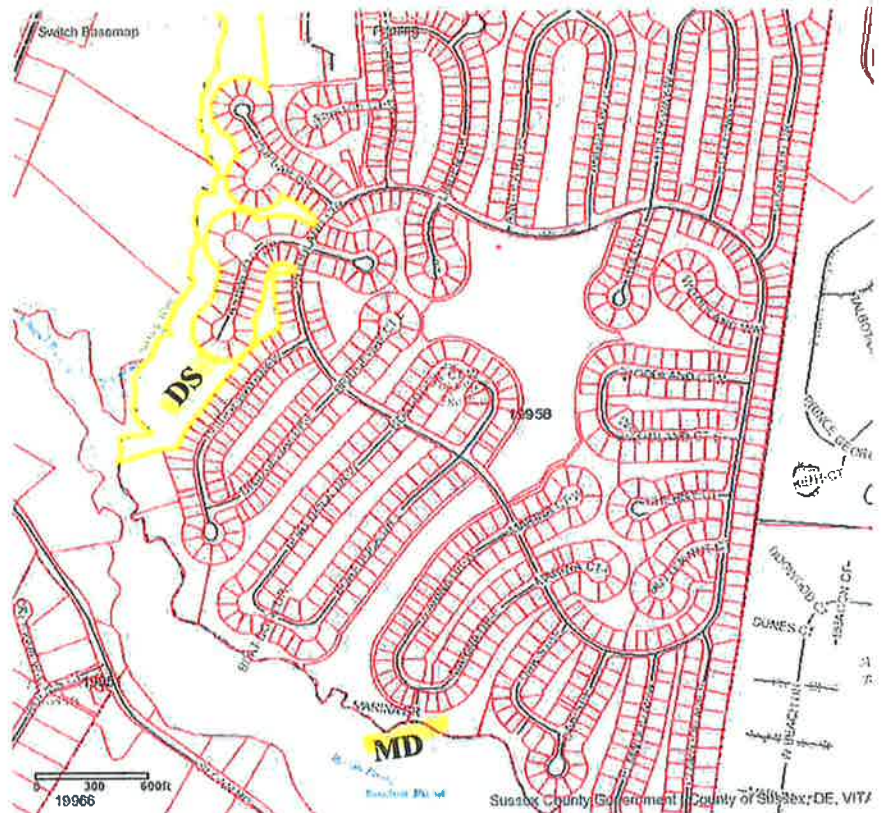


Figure 10. Disposal site location (DS), part of Tax Map Parcel #2-34-11.20-128.00 west of Bridgeway Drive West, Angola by the Bay. Maintenance dredging site (MD) also shown. Site was approved for previous dredged material disposal (SP-261/10; CENAP-OP-R-2010-850-26-NWP35).

W.S.L.S.
APPROVED PLANS
PERMIT # SP-500/16; WWP-500/16
DATE _____
(SEE PERMIT CONDITIONS)

RECEIVED
NOV 30 2016

CONSTRUCTION OF A 24-SLIP DOCKING FACILITY
 (20' X 5' FIXED PIER; 12' X 4' GANGWAY; 132' X 5'
 FLOATING MAIN PIER; TEN 16' X 4' AND TWO 20' X 4'
 FLOATING FINGER PIERS), AND HYDRAULIC MAINTENANCE
 DREDGING (800± C.Y. TO -4' MLW), WITH UPLAND DISPOSAL
 IN: Burton Prong, Herring Creek
 AT: Marina Drive, Angola by the Bay
 Lewes, Sussex Co., DE 19958
 Tax Map Parcel #2-34-17.08-91.00
 APPLICANT: Angola by the Bay Property Owners Assoc.
 DATE: November 21, 2016

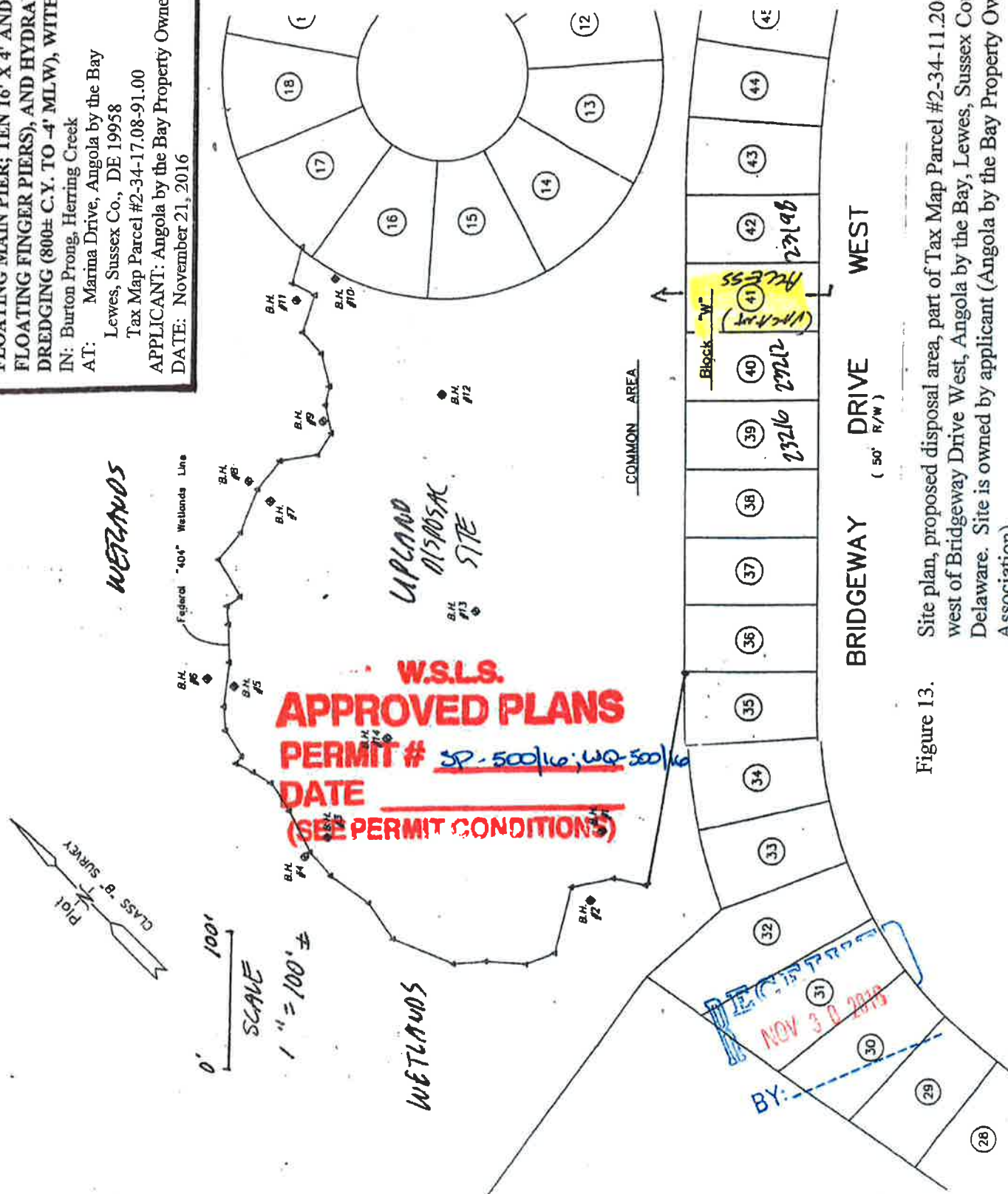


Figure 13. Site plan, proposed disposal area, part of Tax Map Parcel #2-34-11.20-128.00 west of Bridgeway Drive West, Angola by the Bay, Lewes, Sussex County, Delaware. Site is owned by applicant (Angola by the Bay Property Owners Association).



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

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-9943
FAX (302) 739-6304

Angola By the Bay, POA
c/o Mark Wolfe
33457 Woodland Circle
Lewes, DE 19958
Tax Parcel: 2-34-17.08-91.00

Subaqueous Lands Lease: SL-484/17
Associated Marina Permit(s): MP-207/12(S1)
Associated Permit(s): SP-500/16
Water Quality Certification: WQ-500/16
Date of Issuance:
Construction Expiration Date:

**SUBAQUEOUS LANDS LEASE
TO MODIFY A PREVIOUSLY APPROVED
ONE HUNDRED THIRTY (130) SLIP MARINA BY CONSTRUCTING
TWENTY-FOUR (24) ADDITIONAL SLIPS (PHASE V)
TO CREATE A ONE HUNDRED FIFTY-FOUR (154) SLIP MARINA**

GRANTED TO:

Angola By the Bay, POA

**TO CONSTRUCT AND UTILIZE THE FOLLOWING PHASE V DOCKING FACILITY
STRUCTURES:**

**A 5 foot wide by 4 foot long portion of fixed pier,
A 4 foot wide by 12 foot long gangway,
A 5 foot wide by 132 foot long floating pier,
Ten (10) 4 foot wide by 16 foot long floating finger piers,
Two (2) 4 foot wide by 20 foot long floating finger piers,**

TO UTILIZE:

**Structures previously authorized and operated by the
following authorization: MP-207/12(S1)**

PORTIONS OCCUPYING PUBLIC SUBAQUEOUS LANDS TOTALING:

9,325 square feet

LOCATED CHANNELWARD OF MEAN LOW WATER:

**In Burton Prong of Herring Creek,
Angola By the Bay Marina,
At the terminus of Marina Drive,
Lewes, Sussex County, Delaware**

Delaware's good nature depends on you!

Pursuant to the provisions of 7 Del. C. §7205, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this _____ day of _____ A.D. 2018, to construct the above-referenced project in accordance with the approved plans for this Lease (3 sheets), as approved on _____ by Secretary's Order No. _____; and the application dated November 21, 2016, and received by this Division on November 30, 2016 and with subsequent information received on July 19, 2017 and October 30, 2017.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of Burton Prong of Herring Creek; and

WHEREAS, Angola By the Bay, POA, owner(s) of certain lands adjoining to the Burton Prong of Herring Creek have applied for permission to occupy 9,325 square feet of those public lands to install the indicated structures for private use of the residents of Angola By the Bay community; and

WHEREAS, pursuant to the provisions of 7 Del. C. §7203, the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions herein set forth.

This Lease shall be continued for a period of ten (10) years or so long as the conditions attached to the Lease are adhered to, whichever is the shorter in time. Upon the expiration of the ten-year term, this Lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this Lease. A renewal may be denied if the State determines that the Lease is no longer in the public interest.

NOW THEREFORE, this Lease is issued subject to the attached Subaqueous Lands Lease General Conditions and the following special conditions:

SPECIAL CONDITIONS

1. No further marina expansion shall be authorized at the Angola By the Bay Marina until such time that the Department is able to open, amend, and adopt new Marina Regulations through the appropriate public process.
2. Future maintenance dredging shall be limited to the minimum necessary. The maintenance dredging cycle shall be limited to no more than once every four years and shall not exceed the depths of the receiving waterbody.
3. No portion of the structures authorized herein shall extend more than 20 percent the width of the waterbody as measured from mean low water at that location. A portion of the gangway on each Phase of the docking facilities overlaps over the floating pier as shown on the stamped plans.
4. This Lease shall not be considered valid until it has been duly recorded in the office for the Recorder of Deeds in and for the appropriate County, and a copy of the recorded Lease is returned to, and has been received by, the Department.

5. This approval is in accordance with the plans and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.
6. This Lease is granted for the purpose of expanding the current marina footprint by creating twenty-four (24) additional slips as indicated on the approved plans. Any other use without prior approval shall constitute reason for this Lease being revoked.
7. The authorized area of structure over public subaqueous lands is 9,325 square feet, represented by the following structures constructed channelward of the mean low water line:
 - Phase I: A 4 foot wide by 12 foot long gangway, a 5 foot wide by 140 foot long floating pier, and twelve (12) 4 foot wide by 16 foot long floating finger piers;
 - Phase II: A 5 foot wide by 4 foot long section of fixed pier, a 3 foot wide by 12 foot long gangway, a 5 foot wide by 141 foot long floating pier, and twelve (12) 4 foot wide by 16 foot long floating finger piers;
 - Phase III: An 8 foot wide by 1 foot long section of fixed pier, a 4 foot wide by 12 foot long gangway, a 5 foot wide by 140 foot long floating pier, ten (10) 4 foot wide by 16 foot long floating finger piers, and two (2) 4 foot wide by 20 foot long floating finger piers;
 - Phase IV: A 5 foot wide by 2 foot long section of fixed pier, and 3 foot wide by 15 foot long gangway, a 5 foot wide by 106 foot long floating pier, and seven (7) 4 foot wide by 16 foot long floating finger piers;
 - Phase V: A 4 foot wide by 2 foot long section of gangway, a 5 foot wide by 128 foot long section of floating pier, ten (10) 4 foot wide by 16 foot long floating finger piers, and two (2) 4 foot wide by 20 foot long floating finger piers
 - Boat Dock Drive Crabbing Dock: A 5 foot wide by 25 foot long section of fixed pier, a 3 foot wide by 10 foot long gangway, a 4 foot wide by 40 foot long floating pier, and a 4 foot wide by 40 foot long floating dock;
 - Marina Drive / Oak Street Crabbing Dock: An 8 foot wide by 18 foot long section of fixed pier, a 3 foot wide by 10 foot long gangway, a 6 foot wide by 50 foot long floating pier, and an 8 foot wide by 24 foot long floating dock;
 - Elmwood Avenue Crabbing Dock: A 6 foot wide by 18 foot long section of fixed pier, a 3 foot wide by 6 foot long gangway, a 5 foot wide by 31 foot long floating pier, and an 8 foot wide by 29 foot long floating dock;
 - Boat Ramp Area: A 14 foot wide by 19 foot long section of boat ramp, a 3 foot wide by 35 foot long convenience pier with a 1 foot wide by 30 foot long fender, and a 6 foot wide by 28 foot long convenience pier with a 1 foot wide by 20 foot long fender.
8. Of the total 9,325 square feet of structure constructed channelward of the mean low water line, the portion subject to annual Lease fees is the 14 foot wide by 19 foot long section of concrete fill boat ramp (266 square feet). In accordance with 68 Delaware Laws, Volume 1, Chapter 86, Section 14, the concrete boat ramp fill material is subject to a fee of \$1.00/sqft/year. During the ten year term of this Lease, the lessee shall agree to pay the State of Delaware the sum of \$266.00 per annum for a total of \$2,660 for the ten year lease term for the 266 square feet of fill on public subaqueous lands utilized for the above-referenced activity. The lessee shall be billed annually in September for this amount.

9. The primary species of concern for this project area are young-of-the-year (YOY) Summer flounder (*Paralichthys dentatus*), YOY Striped bass (*Morone saxatilis*), and YOY American eel (*Anguilla rostrata*) which utilize the creek as a nursery area. Reference the chart below for specific time-of-year restrictions (depicted in gray) when no in water work shall take place.

	January	February	March	April	May	June	July	August	September	October	November	December
YOY Fish Species	1 st							30 th				

10. The work authorized herein shall be completed in accordance with the terms and conditions of the associated Marina Permit No. MP-207/12(S1), Subaqueous Permit No. SP-500/16 and Water Quality Certification No. WQ-500/16.
11. The work authorized by this Permit is subject to the terms and conditions of the applicable Department of the Army Individual Permit.
12. No portion of the decking on the pier, docks, and finger-piers authorized by this Permit shall exceed the width dimensions for that structure identified on Page One of this Permit.
13. There shall be no excavation channelward of the permitted alignment either before, during or after the installation of any of the authorized structures.
14. No portion of the authorized structures shall be constructed using creosote treated timber.
15. Erosion and sediment control measures shall be implemented in accordance with the specifications and criteria in the current Delaware Erosion and Sediment Control Handbook, so as to minimize entry and dispersal of sediment and other contaminants in surface waters.
16. This Permit does not authorize any future repairs below the water line, or any additions or modifications to the structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.
17. There shall be no movement of equipment within subaqueous lands and wetlands not specifically authorized by this Permit. Any areas disturbed pursuant to this authorization, other than the authorized permanent impact areas, shall be returned to pre-construction conditions/elevations and appropriately stabilized and/or vegetated. Disturbance of wetlands adjacent to the permitted construction by burning, cutting, herbicide treatments, mechanical methods or any other method is prohibited. There shall be no stockpiling of construction material in subaqueous lands or wetlands.



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

GENERAL CONDITIONS

1. The lessee and contractor shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
2. The activities authorized herein shall be undertaken in accordance with the Lease conditions, the final stamped and approved plans, and with the information provided in the lease application.
3. A copy of this Lease and the stamped approved plans shall be available on-site during all phases of construction activity.
4. The conditions contained herein shall be incorporated into any and all construction contracts associated with the construction authorized herein. The lessee and contractor are responsible to ensure that the workers executing the activities authorized by this Lease have full knowledge of, and abide by, the terms and conditions of this Lease.
5. No portion of the structure shall be constructed using creosote treated lumber.
6. No portion of the structure(s) authorized by this Lease shall exceed the dimensions for that structure identified on Page One of this Lease.
7. The activities authorized herein shall be conducted so as not to violate the State of Delaware's Surface Water Quality Standards in effect at the date of Lease authorization.
8. The issuance of this Lease does not constitute approval for any activities that may be required by any other local, state or federal government agency.
9. The issuance of this Lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.
10. This Lease authorizes only the activities described herein. Modifications to the project may require a supplemental approval from this office prior to the initiation of construction. A determination of the need for a supplemental approval will be made by this office pursuant to the lessee submitting written notification and revised plans indicating project changes. Failure to contact the Department prior to executing changes to the project shall constitute reason for this Lease being revoked.
11. The Contractors Completion Report shall be filled out and returned within 10 days of completion of the authorized work.
12. The lessee shall protect and hold the State of Delaware harmless from any loss, cost or damage resulting from the activities authorized herein.
13. Representatives of the Department of Natural Resources and Environmental Control shall be allowed to access the property to inspect all work during any phase of the construction and may conduct pre and post-construction inspections, collect any samples or conduct any tests that are deemed necessary.
14. The lessee shall maintain all authorized structures and activities in a good and safe condition.

Delaware's good nature depends on you!

15. All construction materials, waste or debris associated with this activity shall be properly disposed of and contained at all times to prevent its entry into waters or wetlands. Construction materials shall not be stockpiled in subaqueous lands or wetlands.
16. The lessee and contractor shall employ measures during construction to prevent spills of fuels, lubricants or other hazardous substances. In the event of a spill, the lessee and contractor shall make every effort to stop the leak and contain the spill, and shall immediately contact the Hazardous Spill Response Team (HAZMAT) at 1-800-662-8802 and this office at (302) 739-9943. The lessee and contractor are responsible to comply with all directives to contain and clean up the spilled material(s) as stipulated by the HAZMAT team, and to restore the site as may be required by this office.
17. No construction shall occur after the construction expiration date identified on Page One of this Lease. The lessee may file a construction expiration date extension request of up to one (1) year if necessary to complete the authorized work. Such requests must be received by the Department at least thirty (30) days prior to the construction expiration date.
18. Any actions, operations or installations which are found by the Department to be contrary to the public interest may constitute reason for the discontinuance and/or removal of said action, operation or installation. Removal and restoration shall be at the expense of the lessee and/or upland property owner within thirty (30) days of receipt of written notice of revocation and demand for removal.
19. Disturbance of subaqueous lands or wetlands adjacent to the authorized structures or activities is prohibited unless specifically addressed in the special conditions of this Lease. Disturbance of subaqueous lands or wetlands in the path of construction activities shall be minimized. Any temporarily impacted subaqueous lands or wetlands shall be returned to pre-disturbance elevations and conditions.
20. This Lease is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the adjacent upland property, the lessee shall obtain the written consent of the Department to transfer the Lease to the new upland property owner. Failure to obtain such written consent may result in the revocation of this Lease and the removal of all structures authorized by this Lease at the expense of the lessee.
21. The lessee shall notify the Wetlands and Subaqueous Lands Section prior to the commencement of the work authorized by this Lease.
22. No portion of the structure shall be installed within ten (10) feet of the adjacent property lines.
23. No portion of the structure shall exceed 20% of the width of the water body as measured at mean low water.
24. The structures authorized by this Lease shall be constructed and maintained in a manner so as to assure water access to adjacent properties.
25. This Lease does not authorize any future repairs below the water line, or any additions or modifications to the structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.
26. Failure to comply with any of the terms or conditions of this Lease may result in enforcement action which could include the revocation of this Lease and subsequent restoration of the site to preconstruction conditions.

IN WITNESS WHEREOF, I, Mark Wolfe, the duly authorized representative of Angola By the Bay, POA, have caused this instrument to be executed on this _____ day of _____, 2018.

By: _____
Mark Wolfe
Angola By the Bay, POA (Lessee)

By _____
Sworn and Subscribed before me on
this ____ day of _____, 2018

(Notary Seal)

Notary

IN WITNESS WHEREOF, I, Shawn M. Garvin, Secretary of the Department of Natural Resources and Environmental Control, have hereunto set my hand this _____ day of _____, 2018.

Shawn M. Garvin, Secretary
Department of Natural Resources and Environmental Control

