



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

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OFFICE OF THE
SECRETARY

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Secretary's Order No: 2021-W-0007

RE: Application of 204 Salisbury Exchange, LLC for a Subaqueous Lands Lease

Date of Issuance: March 08, 2021

Effective Date: March 08, 2021

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department," "DNREC") pursuant to 7 *Del.C.* §§6003, 6004, 6006(4), and all other relevant statutory authority, the Department issues this Order, approving the application submitted by 204 Salisbury Exchange, LLC ("Applicant") for a Subaqueous Lands Lease to construct and utilize a residential pier, two docks, and mooring pilings in Head of Bay Cove, Rehoboth Bay at 204 Salisbury Street, Rehoboth, Sussex County, DE ("Application") in accordance with 7 DE Admin. Code 7504 - *Regulations Governing the Use of Subaqueous Lands* ("Regulation"). The following findings of fact based on the record, reasons and conclusions are entered as an Order of the Secretary in the above-referenced subaqueous lands lease application proceeding.

Background, Procedural History and Findings of Fact

On August 12, 2019 the Department's Division of Water, Wetlands and Subaqueous Lands Section ("WSLS") received the initial application submitted by the Applicant to construct and utilize a 4-foot-wide by 128-foot-long pier that meets the land between the two parcels that comprise the Applicant's property and is angled east of the property towards a state-owned parcel. The applicant also proposed two 5-foot wide by 26-foot-long docks east of the pier and to install eleven free-standing mooring pilings. It should be noted, per Section 4.9.210 of the Regulation, a convenience structure shall be set back a minimum of ten (10) feet from adjacent property lines.

In accordance with 7 *Del. C.* §7207, the Department placed the initial application on public notice. To that, the Department received five written comments from the public in objection to the initial application and a public hearing was requested.

On September 11, 2019, as a part of the application review process, the Department conducted an on-site visit with the Applicant at the aforementioned property. During the on-site visit, the Department conducted bathymetry of the proposed project. The bathymetry points were conducted at 10-foot increments, beginning 30 feet from the mean high-water line. The Department determined that there was no gain in water depth between the 110-foot mark and the 130-foot mark (approximately where the length of the pier would end.)

Subsequent to the onsite visit with the Applicant, and at the recommendation of the Department, the Applicant submitted a revised Application on February 7, 2020 to meet the requirements of the Regulations. The Applicant revised the initial application by: (1) reducing the length of the pier by 14 feet, proposing to construct a 4-foot by 114-foot-long pier, (2) reducing the number of free-standing mooring pilings from eleven to three, (3) moving the two 5-foot wide by 26-foot-long docks from the east of the pier to the west of the pier, and (4) moving the pier's junction with land west, to comply with the setback of the east property boundary owned by the State.

On April 30, 2020, the virtual public hearing was held by the Department. The Department's staff from the Division of Water, primarily responsible for reviewing this Application, developed the hearing record ("Record") with the relevant documents in the Department's files. The Applicant's Consultant with Coastal & Estuarine Research, Inc, introduced a timeline of the Application process and that document was marked into the Record at the time of the virtual public hearing. There were eleven (11) members of the public in attendance at the hearing. At the conclusion of the virtual public hearing, the Record remained open for 15 days and comment was received through May 15, 2020.

Following the close of record, and at the request of Hearing Officer Theresa Newman, the technical experts in the WSLs prepared a Technical Response Memorandum ("TRM") to: (1) address the concerns associated with this pending Application, as set forth in the public comment received by the Department; (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 the Applicant's pending Application for the benefit of the Record generated in this matter.

Subsequent to the Department's TRM having been received for inclusion into the Record, the Department's presiding Hearing Officer prepared a Hearing Officer's Report dated January 22, 2021 ("Report"). Ms. Newman'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 draft lease. The Report concluded that the draft Subaqueous Lands Lease is protective of human health and the environment while being consistent with applicable State and Federal regulations.

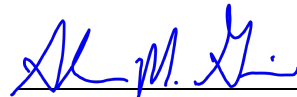
Reasons and Conclusions

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, I find and conclude that the Record developed in this matter supports approval of 204 Salisbury Exchange, LLC's application for a Subaqueous Lands Lease, consistent with 7 DE Admin. Code 7504 - *Regulations Governing the Use of Subaqueous Lands of the Regulations*. Therefore, the recommendations of the Hearing Officer are hereby adopted, and I direct that a Subaqueous Lands Lease be issued to the Applicant to construct and utilize a 4-foot by 114-foot-long pier, install two 5-foot wide by 26-foot-long docks west of the pier and install three free-standing mooring pilings in Head of Bay Cove, Rehoboth Bay, at 204 Salisbury Street, Rehoboth, Sussex County, DE.

I further direct that the following reasons and conclusions are entered:

1. The Department has jurisdiction under 7 *Del. C.* §§6003, 6004, 6006(4) and all other relevant statutory authority, to make a final determination of the Application after holding a public hearing, considering the public comments, and reviewing all information contained in the Record generated in this matter;
2. The Department provided proper public notice of the Application submitted by 204 Salisbury Exchange, LLC and the public hearing held on April 30, 2020 and held said hearing to consider all public comment that may be offered on the Application, in a manner required by the law and regulations;
3. The Department has carefully considered the factors required to be weighed in issuing the Subaqueous Lands Lease required by this Application, and finds that the Record supports approval of the Application and the issuance of the Subaqueous Lands Lease associated with the same;

4. The Department shall issue the Subaqueous Lands Lease to the Applicant, Salisbury Exchange, LLC to construct and utilize a 4-foot by 114-foot-long pier, two 5-foot wide by 26-foot-long docks west of the pier and install three free-standing mooring pilings in Head of Bay Cove, Rehoboth Bay, at 204 Salisbury Street, Rehoboth, Sussex County, DE, consistent with the Record developed in this matter. Furthermore, said lease shall include all conditions as set forth in the Department's draft lease, to ensure that Delaware's environment and public health will be protected from harm;
5. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
6. 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