



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: 2024-W-0037

RE: Application of Andrew and Maureen Bolduc for a Subaqueous Lands Permit

Date of Approving: September 13, 2024

Effective Date: September 13, 2024

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department," "DNREC") pursuant to *Delaware's Subaqueous Lands Act* (7 Del.C. Ch. 72) and the Department's *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504) and all other relevant statutory authority, the Department issues this Order, approving the application submitted by Andrew and Maureen Bolduc ("Applicant," "Bolduc") for a Subaqueous Lands Permit to authorize an after-the-fact dock extension, conduct mechanical maintenance dredging located at 32408 Holly Terrace Road, Holly Ridge Terrace, Ocean View, Sussex County, Delaware (Tax Map Parcel #1-34-9.00- 186.00), and transport the dredged material via water-tight dump trucks to a confined disposal area located northeast of the intersection of Irons Lane and Old Mill Road at Tax Parcel# 134-7.00-187.00, Dagsboro, DE ("Application"). 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 Permit Application proceeding and support the approval of the Application described herein.

Background, Procedural History and Findings of Fact

The Department's Division of Water, Wetlands and Waterways Section ("WWS") received an application submitted on behalf of the Applicant by Coastal and Estuarine Research, Inc. ("Consultant"), dated March 5, 2018. The application proposed to mechanically dredge approximately 110± cubic yards of sediment at 32408 Holly Terrace Road, Ocean View, Delaware, to restore the original depth and improve navigation for the Applicant. The dredging, using a long-reach excavator, would reach a depth of -4 feet mean lower water ("MLW") towards the centerline of the unnamed lagoon, on the Applicant's private subaqueous lands. The dredged material would then be transported 5 miles from the site to a confined disposal area northeast of the intersection of Irons Lane and Old Mill Road in Dagsboro, DE (Tax Parcel# 134-7.00-187.00).

The WWS conducted an initial review of the Application and issued a 20-day public notice in *The News Journal* and *Delaware State News* from April 4, 2018, through April 24, 2018. In response, the Department received one written objection from a neighboring property owner. The commenter raised concerns regarding property line discrepancies, specifically stating that the property line aligns with the bulkhead located east of the proposed project, rather than the lagoon's centerline. The commenter also expressed apprehensions that the dredging could potentially damage their bulkheads, which are located south of the Applicant's proposed project.

During the initial review process, the Department conducted an on-site inspection which included a field reconnaissance to assess water depths. Utilizing a GPS unit with submeter accuracy, it was determined that White Creek, the connecting waterbody to the unnamed lagoon where the project is proposed, has a controlling water depth of -4 feet MLW. According to Section 4 of the *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), dredging projects cannot exceed the existing controlling depth of the connecting waterway. The unnamed lagoon was found to have depths ranging from -3 feet MLW, becoming shallower near the project site. Consequently, the Department required the Applicant to limit maintenance dredging to -3 feet MLW to comply with the regulations.

The Department also reviewed the site's permitting history. Under Statewide Activity Approval No. SA-199/09, the permit authorized a 4-foot-wide by 25-foot-long dock. The inspection revealed a 4-foot-wide by 26-foot-long dock with a 4-foot-wide by 5-foot-long set of access steps. According to 7 *Del.C.* §7205, the Secretary may issue an after-the-fact authorization provided the activity aligns with the purposes and provisions of the *Subaqueous Lands Act*. The Department advised the Applicant that the existing structure was not in compliance and that they were required to request an after-the-fact authorization.

As a result of the Department's review and the concerns raised by the commenter, the Applicant submitted a revised Application. The revisions included: (1) a request for an after-the-fact authorization of a dock extension; (2) modifications to the dredging area, extending it towards the bulkhead and 10 feet away from the commenter's adjacent property lines located to the east and south of the proposed dredging activity; (3) increasing the dredged area to 153± cubic yards to a depth of -3 feet MLW; and (4) a letter of no objection from the property owner to the north.

The Applicant's after-the-fact permit request detailed a dock extension of 4-foot-wide by 1-foot-long, with a 4-foot-wide by 5-foot-long set of access steps to bring the existing dock into compliance. An updated property survey was also submitted, indicating that the Applicant's property line measures up to the bulkhead, rather than the lagoon's centerline. To that, the dredging area was modified to extend 10 feet from the property lines toward the bulkheads on the eastern and southern side of the proposed project. It should be noted that the northern property line is shared with an adjacent landowner who provided a letter of no objection to the dredging, which was included in the revised Application. As a result of the expanded dredging area, the Applicant also increased the estimated dredging from 110± to 153± cubic yards. Lastly, to comply with regulations, the Applicant reduced the dredging depth from -4 feet to -3 feet MLW.

After receiving the revised Application, the Department communicated with the adjacent property owner who had initially objected to the project to discuss the Applicant's revisions. The neighbor maintained their opposition to the project, even in its revised form. Due to the unresolved objections and the Applicant's inability to reach a satisfactory resolution with the adjacent property owner, on March 18, 2020, the Department issued notice of a public hearing in *The News Journal* and *Delaware State News*.

On April 15, 2020, the public hearing was held by the Department. The Department's WWS, primarily responsible for reviewing this Application, developed the hearing record ("Record") with the relevant documents in the Department's files. There was one member of the public in attendance for the virtual hearing, along with the Applicant and Department staff. There were no verbal comments from the public at the time of the public hearing.

The record remained open through April 30, 2020, and in total the Department received 4 written comments that were incorporated into the Record. Proper notice of the hearing was provided as required by law. Following the close of record, and at the request of Hearing Officer Theresa Smith, the technical experts in the WWS provided a Technical Response Memorandum ("TRM"). The Department's TRM addressed the concerns raised by providing an evaluation of the proposed project in accordance with Delaware's *Subaqueous Lands Act* (7 Del.C. Ch.72) and the Regulation. The Department's TRM, dated June 25, 2024, and received by this Hearing Officer on July 12, 2024, is discussed in greater detail below.

Hearing Officer Smith prepared a Hearing Officer's Report dated August 28, 2024 ("Report"). Mrs. Smith's Report set forth the procedural history, summarized and established the Record relied on in the Report, and provided findings of fact, reasons, and conclusions that recommend the Department approve this revised Application, subject to the conditions set forth in the draft permit. The Report concluded that the draft Subaqueous Lands Permit is protective of human health and the environment, while being consistent with applicable state laws and regulations. The Report, along with its Appendices, are incorporated herein by reference.

Reasons and Conclusions

Currently pending before the Department is the proposed revised Application for a Subaqueous Lands Permit (1) to authorize an after-the-fact dock extension, measuring 4-foot-wide by 1-foot-long with a 4-foot-wide by 5-foot-long set of access steps, (2) to conduct 153± cubic yards of mechanical maintenance dredging to a depth of 3 feet below MLW at an unnamed lagoon adjacent to White Creek, located at 32408 Holly Terrace Road, Holly Ridge Terrace, Ocean View, Sussex County, Delaware (Tax Map Parcel #1-34-9.00- 186.00), and (3) to transport the dredged material via water-tight dump trucks, approximately 5 miles to a confined disposal area located northeast of the intersection of Irons Lane and Old Mill Road at Tax Parcel# 134-7.00-187.00, Dagsboro, DE.

I find that the Applicant is required to obtain a Subaqueous Lands Permit for the proposed project described above. As such, I further find that the above-described proposed project is subject to various state and federal regulatory requirements, including, but not limited to, the requirements of Delaware's *Subaqueous Lands Act* (7 Del.C. Ch. 72 and the *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and as provided for under 7 Del.C. Ch. 60.

The Department's TRM provides a thorough review of the proposed project in light of the applicable statute and regulations associated with the Application and the concerns voiced in the public comment received in this matter. The Department received 1 comment in objection by a neighboring property owner prior to the hearing and 3 comments in support of the proposed project after the hearing.

The Department addressed the objections received by the commenter that expressed concerns regarding property line discrepancies and concerns of possible collapse of adjacent bulkheads. In response to the comments, the Department detailed the modifications made by the Applicant and confirmed that the revised Application meets all regulatory and federal requirements. More specifically, the revised Application included an updated property survey, detailing that the Applicant's property line is to their bulkhead rather than the lagoon's centerline, as stated by the commenter. The Applicant also modified the proposed dredging area to 10 feet from the adjacent property lines located to the east and south, to alleviate the concern of potential collapse of bulkheads owned by adjacent property owners. The Department concluded that the after-the-fact authorization request for the as-built docking facility structure and the maintenance dredging, as described in the revised application submitted by Mr. and Mrs. Bolduc, addressed the concerns expressed by the public and complies with the Regulations.

Based on the Record developed by the Department's experts and established by the Hearing Officer's Report, and under the authority of 7 Del.C Ch. 72, I find that the Record developed in this matter indicates that the Applicant has adequately demonstrated their compliance consistent with Delaware's *Subaqueous Lands Act* (7 Del.C. Ch 72) and the Department's *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504). I find and conclude that the Record supports approval of the revised proposed Application as submitted to the Department's Division of Water, WWS, in this matter and the recommendations of the Hearing Officer are hereby adopted.

Accordingly, I direct that the Application for a Subaqueous Lands Permit be issued, with the appropriate conditions as set forth herein, to Andrew and Maureen Bolduc to (1) authorize an after-the-fact dock extension, measuring 4-foot-wide by 1-foot-long with a 4-foot-wide by 5-foot-long set of access steps, (2) conduct 153± cubic yards of mechanical maintenance dredging to a depth of 3 feet below MLW at an unnamed lagoon adjacent to White Creek, located at 32408 Holly Terrace Road, Holly Ridge Terrace, Ocean View, Sussex County, Delaware (Tax Map Parcel #1-34-9.00- 186.00), and (3) transport the dredged material via water-tight dump trucks, approximately 5 miles to a confined disposal area located northeast of the intersection of Irons Lane and Old Mill Road at Tax Parcel# 134-7.00-187.00, Dagsboro, DE.

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

1. The Department has jurisdiction under Delaware's *Subaqueous Lands Act* (7 Del.C. Ch. 72) and the *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504) 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 Andrew and Maureen Bolduc and of the public hearing held on April 15, 2020. Further, the Department 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 Permit required by this Application, and finds that the Record supports the approving of the Application, and the issuance of the Subaqueous Lands Permit associated with the same;

4. The Department shall issue the Subaqueous Lands Permit to the Applicant, Andrew and Maureen Bolduc, to (1) authorize an after-the-fact dock extension, measuring 4-foot-wide by 1-foot-long with a 4-foot-wide by 5-foot-long set of access steps, (2) conduct 153± cubic yards of mechanical maintenance dredging to a depth of 3 feet below MLW at an unnamed lagoon adjacent to White Creek, located at 32408 Holly Terrace Road, Holly Ridge Terrace, Ocean View, Sussex County, Delaware (Tax Map Parcel #1-34-9.00-186.00), and (3) transport the dredged material via water-tight dump trucks, approximately 5 miles to a confined disposal area located northeast of the intersection of Irons Lane and Old Mill Road at Tax Parcel# 134-7.00-187.00, Dagsboro, DE, consistent with the Record developed in this matter. Furthermore, said permit shall include all conditions as set forth in the Department's draft permit, 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