


 Initial Review: _____
 Updated On: _____
 Complete: _____
 Official Use Only

Coastal Zone Management Act Federal Consistency Form

This document provides the Delaware Coastal Management Program (DCMP) with a Federal Consistency Determination or Certification for activities regulated under the Coastal Zone Management Act of 1972, as amended, and NOAA's Federal Consistency Regulations, 15 C.F.R. Part 930. Federal agencies and other applicants for federal consistency are not required to use this form; it is provided to applicants to facilitate the submission of a Consistency Determination or Consistency Certification. In addition, federal agencies and applicants are only required to provide the information required by NOAA's Federal Consistency Regulations.

Project/Activity Name: Buckalew Retaining wall and backfill

i. Federal Agency or Non-Federal Applicant Contact Information:

Contact Name/Title: Evelyn Maurmeyer, CER, Inc. (applicant's agent)

Federal Agency Contractor Name (if applicable): n/a

Federal Agency: NWP#29 application submitted to US Army Corps of Engineers
 (either the federal agency proposing an action or the federal agency issuing a federal license/permit or financial assistance to a non-federal applicant)

Mailing Address: PO Box 674

City: Lewes State: DE Zip Code: 19958

E-mail: maurmeye@udel.edu Telephone #: (302) 645-9610

ii. Federal Consistency Category:

Federal Activity or Development Project
(15 C.F.R. Part 930, Subpart C)

Outer Continental Shelf Activity
(15 C.F.R. Part 930, Subpart E)

Federal Financial Assistance
(15 C.F.R. Part 930, Subpart F)

Federal License or Permit Activity
(15 C.F.R. Part 930, Subpart D)

Federal License or Permit Activity which occurs
wholly in another state (interstate consistency
activities identified in DCMP's Policy document)

iii. Detailed Project Description (attach additional sheets if necessary):

See attached sheets

IV. **General Analysis of Coastal Effects** (attach additional sheets if necessary):

V. **Detailed Analysis of Consistency with DCMP Enforceable Policies** (attach additional sheets if necessary):

Policy 5.1: Wetlands Management

Policy 5.2: Beach Management

Policy 5.3: Coastal Waters Management (includes wells, water supply, and stormwater management. Attach additional sheets if necessary)

Policy 5.4: Subaqueous Land and Coastal Strip Management

Policy 5.5: Public Lands Management

Policy 5.6: Natural Lands Management

[Empty text box for Policy 5.6 content]

Policy 5.7: Flood Hazard Areas Management

[Empty text box for Policy 5.7 content]

Policy 5.8: Port of Wilmington

[Empty text box for Policy 5.8 content]

Policy 5.9: Woodlands and Agricultural Lands Management

[Empty text box for Policy 5.9 content]

Policy 5.10: Historic and Cultural Areas Management

[Empty text box for Policy 5.10 content]

Policy 5.11: Living Resources

[Empty text box for Policy 5.11 content]

Policy 5.12 Mineral Resources Management

[Empty text box for Policy 5.12 content]

Policy 5.13: State Owned Coastal Recreation and Conservation

[Empty rectangular box for Policy 5.13 content]

Policy 5.14: Public Trust Doctrine

[Empty rectangular box for Policy 5.14 content]

Policy 5.15: Energy Facilities

[Empty rectangular box for Policy 5.15 content]

Policy 5.16: Public Investment

[Empty rectangular box for Policy 5.16 content]

Policy 5.17: Recreation and Tourism

[Empty rectangular box for Policy 5.17 content]

Policy 5.18: National Defense and Aerospace Facilities

[Empty rectangular box for Policy 5.18 content]

Policy 5.19: Transportation Facilities

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Policy 5.20: Air Quality Management

Policy 5.21: Water Supply Management

Policy 5.22: Waste Disposal Management

Policy 5.23: Development

Policy 5.24: Pollution Prevention

Policy 5.25: Coastal Management Coordination

VI. JPP and RAS Review (Check all that apply):

Has the project been reviewed in a monthly Joint Permit Processing and/or Regulatory Advisory Service meeting?

JPP

RAS

None

*If yes, provide the date of the meeting(s): _____

VII. Statement of Certification/Determination and Signature (Check one and sign below):


FEDERAL AGENCY CONSISTENCY DETERMINATION. Based upon the information, data, and analysis included herein, the federal agency, or its contracted agent, listed in (I) above, finds that this proposed activity is consistent to the maximum extent practicable with the enforceable policies of the Delaware Coastal Management Program.

OR

FEDERAL AGENCY NEGATIVE DETERMINATION. Based upon the information, data, and analysis included herein, the federal agency, or its contracted agent, listed in (I) above, finds that this proposed activity will not have any reasonably foreseeable effects on Delaware's coastal uses or resources (Negative Determination) and is therefore consistent with the enforceable policies of the Delaware Coastal Management Program.

OR

NON-FEDERAL APPLICANT'S CONSISTENCY CERTIFICATION. Based upon the information, data, and analysis included herein, the non-federal applicant for a federal license or permit, or state or local government agency applying for federal funding, listed in (I) above, finds that this proposed activity complies with the enforceable policies of the Delaware Coastal Management Program and will be conducted in a manner consistent with such program.

Signature:		
Printed Name:	Evelyn M. Maurmeyer, CER, Inc.	Date: 4/19/2024

Pursuant to 15 C.F.R. Part 930, the Delaware Coastal Management Program must provide its concurrence with or objection to this consistency determination or consistency certification in accordance with the deadlines listed below. Concurrence will be presumed if the state's response is not received within the allowable timeframe.

Federal Consistency Review Deadlines:

Federal Activity or Development Project (15 C.F.R. Part 930, Subpart C)	60 days with option to extend an additional 15 days or stay review (15 C.F.R. § 930.41)
Federal License or Permit (15 C.F.R. Part 930, Subpart D)	Six months, with a status letter at three months. The six month review period can be stayed by mutual agreement. (15 C.F.R. § 930.63)
Outer Continental Shelf Activity (15 C.F.R. Part 930, Subpart E)	Six months, with a status letter at three months. If three month status letter not issued, then concurrence presumed. The six month review period can be stayed by mutual agreement. (15 C.F.R. § 930.78)
Federal Financial Assistance to State or Local Governments (15 C.F.R. Part 930, Subpart F)	State Clearinghouse schedule

OFFICIAL USE ONLY:

Reviewed By:	Fed Con ID:	Date Received:
Public notice dates: _____ to _____	Comments Received: <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES <i>[attach comments]</i>	
Decision type: <small>(objections or conditions attach details)</small>	Decision Date: _____	



COASTAL & ESTUARINE RESEARCH, INC.

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April 9, 2024

**DELAWARE COASTAL MANAGEMENT PROGRAM
FEDERAL CONSISTENCY CERTIFICATION**

Applicants

William F. and Leslie G. Buckalew
1144 Elderon Drive
Wilmington, DE 19808
(610) 416-0418
wfbuckalew@gmail.com

III. Detailed Project Description

Site Location and Description. The project site is 17 Love Creek Pines Lane, Lewes, Sussex County, Delaware (Tax Map Parcel #334-18.00-17.00). Latitude: 38.70455° North; Longitude: -75.16218° west. See Figures 1, 2, and 3 for location maps, and Figure 4 for aerial photograph. The site is a vacant residential parcel, approximately 17,111 sq. ft. (0.39 acre) in size. The site is depicted on the USGS topographic map, Fairmount, Delaware quadrangle (Figure 5), and is adjacent to Love Creek, a tributary of Rehoboth Bay. The site is shown on the National Wetlands Inventory Map (Figure 6). Site is mapped uplands; wetlands adjacent to Love Creek are mapped E2EM1P (estuarine intertidal emergent, persistent, *Phragmites australis*, saltwater tidal, irregularly flooded). Love Creek is mapped E1UBL (estuarine subtidal, unconsolidated bottom, subtidal). The site is depicted on State of Delaware DNREC Wetland Map #082, 1988 photobase (Figure 7). The site is mapped O (other, uplands or non-tidal wetlands less than 400 acres). Waterway (Burton Prong, Herring Creek) is mapped W (water). No DNREC-regulated wetlands are mapped on site. The USDA Web Soil Survey of the site and vicinity is shown in Figure 8. Soils on site are mapped:

Br: Broadkill mucky peat, very frequently flooded, tidal
RoA: Rosedale loamy sand, 0 to 2 percent slopes
WHe1: Herring Creek mucky silt loam, 0 to 1 meter water depth (Love Creek)

Federal 404 Wetland Line. The Federal 404 wetland line was delineated on site on June 7, 2022 by Evelyn Maurmeyer, CER, Inc. The Federal 404 wetland line is located at a slight break in slope, at the lower limit of loblolly pines (*Pinus taeda*, FAC) and the upper limit of the giant reed (*Phragmites australis*, FACW); at the interface between non-hydric, Rosedale loamy sand hydric Broadkill mucky peat, very frequently flooded, tidal. See Figure 9 for photograph, and Figure 10 for survey prepared by Karins and Associates showing location of Federal 404 wetland line.

Mean High Water Line: The mean high water line (MHWL) was delineated on site on April 10, 2023 by Katie Esposito, DNREC Wetlands and Waterways Section (JD-151/22), as described in Attachment 1. See Figure 10 for survey prepared by Karins and Associates showing location of mean high water line.

Proposed Project: The applicants propose the following activities:

- Construction of a vinyl retaining wall at the high tide line, ranging from 1.5' to 15' landward/ upslope of the mean high water line (see Figure 10). The face of the structure will consist of two segments, approximately 40 linear feet and 65 linear feet, for a total of 105 linear feet, and will be approximately 3' in height. There will be two (2) 20' return walls at the northern and southern property lines.
- The retaining wall will be backfilled with approximately 111 cubic yards of select fill (80% sand, 20% clay). Thickness of the fill will range from 3' on the landward side of the wall and will taper to 0' at the wetland/upland boundary (see inset, Figure 10). All fill will be landward of the MHWL.
- Total impact of the structure and backfill in Federal 404 non-tidal, *Phragmites australis* wetlands will be approximately 1,925 sq. ft. (0.044 acre).
- The structure and backfill will be installed by the applicants' contractor, Precision Marine Construction, Inc. Work will be conducted using excavators, to be placed on mats on the wetland surface during construction. Location lines for the structure will be established; pilings will be driven using a vibratory hammer; walers will be added; and vinyl sheeting for the wall will be installed. Deadmen and tie rods will be installed, then the retaining wall will be backfilled with 111 c.y. select fill using a skid steer, and graded.

Project Purpose: Purpose of the project is bank stabilization and reduction of storm flooding on applicants' upland property, where their single family home will be constructed.

IV. General Analysis of Coastal Effects.

Purpose of the project is bank stabilization and reduction of storm flooding on applicants' upland property, where their single family home will be constructed. The site is adjacent to Love Creek, a tributary of Rehoboth Bay. No work is taking place in public subaqueous lands (channelward of mean low water line). The proposed project will assure continued availability of the waterway for public recreational purposes. The proposed project is consistent with enforceable policies of the Delaware Coastal Management Program, as described in greater detail in the ensuing sections.

V. Detailed Analysis of Consistence with DCMP Enforceable Policies

POLICY 5.1: WETLANDS MANAGEMENT. No DNREC-regulated wetlands are mapped at the site (see Figure 7). The project will impact 1,925 sq. ft. (0.044 acre) of Federal 404 non-tidal, *Phragmites australis*-dominated wetlands, for which an application for Nationwide Permit #18 has been submitted to the Corps of Engineers. The application is under review by Michael Yost, US Army Corps of Engineers, who is processing the application under Nationwide Permit #29 authorization, since the total volume of fill exceeds 25 c.y.; therefore requires CZM consistency certification.

POLICY 5.2: BEACH MANAGEMENT. The project site is not within the area of DNREC-regulated beaches.

POLICY 5.3: COASTAL WATERS MANAGEMENT. The proposed project will assure continued availability of the waterway (Love Creek) for public recreational purposes. The proposed structure and backfill will not extend channelward of the mean high water line (nor mean low water line), thus will not impede navigational use of the waterway. The project will maintain beneficial uses of the waterway for the public (including secondary contact recreation such as boating and fishing). The project will not result in pollution which may threaten the safety and health of the public. Approved materials will be utilized for construction (salt-treated wood; vinyl sheeting; select fill, which will be landward of the retaining wall so that fill will not impact the waterway). No creosote-treated timber or other harmful materials will be utilized.

POLICY 5.4: SUBAQUEOUS LANDS AND COASTAL STRIP MANAGEMENT. The proposed project does not involve industrial nor manufacturing facilities. There will be no extraction of materials (dredging) associated with the proposed project. The project involves construction of a retaining wall with backfill on the applicants' private property, for which a permit application has been submitted to the US Army Corps of Engineers. (The work will be out of DNREC Wetlands and Waterways Section jurisdiction, therefore no permit required.) The coastal strip will continue to be protected for public use for recreation, fishing, and crabbing; the proposed project will not impact these activities. No additional supporting facilities will be required for the project.

POLICY 5.5: "PUBLIC LANDS" MANAGEMENT. The project will be located entirely on private lands owned by the applicants

POLICY 5.6: NATURAL AREAS MANAGEMENT. The project site does not lie within a State Natural Heritage site nor within a Delaware National Estuarine Research Reserve.

POLICY 5.7: FLOOD HAZARD AREAS MANAGEMENT. The purpose of the proposed project is to reduce flood hazards on the applicants' property.

POLICY 5.8: PORT OF WILMINGTON. The project site is not located in the Port of Wilmington.

POLICY 5.9: WOODLANDS AND AGRICULTURAL LANDS MANAGEMENT. The site is not located within the woodlands or agricultural lands.

POLICY 5.10: HISTORIC AND CULTURAL AREAS MANAGEMENT. The PCN has been submitted to the Delaware Division of Historical and Cultural Affairs to determine if any registered properties or properties listed as eligible for inclusion in the National Register of Historic Places would be affected by the proposed project.

POLICY 5.11: LIVING RESOURCES. The PCN application has been submitted to the US Fish and Wildlife Agency and the Delaware Division of Fish and Wildlife to determine if the proposed project will affect living resources.

POLICY 5.12: MINERAL RESOURCE MANAGEMENT. No mineral extraction proposed.

POLICY 5.13: STATE-OWNED COASTAL RECREATION AND CONSERVATION. The site is not State-owned. However, recreational opportunities for the public in the Love Creek will be maintained.

POLICY 5.14: PUBLIC TRUST DOCTRINE. The public's right to navigation will not be impeded by the proposed project.

POLICY 5.15: ENERGY FACILITIES. The proposed project does not involve energy facilities.

POLICY 5.16: PUBLIC INVESTMENT. The project is entirely private; no public investment involved.

POLICY 5.17: RECREATION AND TOURISM. The proposed project will have no effect on recreation or tourism.

POLICY 5.18: NATIONAL DEFENSE AND AEROSPACE FACILITIES. The proposed activity does not involve national defense nor aerospace facilities.

POLICY 5.19: TRANSPORTATION FACILITIES. The proposed project does not involve commercial transportation facilities.

POLICY 5.20: AIR QUALITY MANAGEMENT. Air pollution resulting from the proposed project will be minimal.

POLICY 5.21: WATER SUPPLY MANAGEMENT. The site is not located in a water supply area.

POLICY 5.22: WASTE DISPOSAL MANAGEMENT. No waste disposal is associated with the proposed project.

POLICY 5.23: DEVELOPMENT. The proposed project is not associated with new community development.

POLICY 5.24: POLLUTION PREVENTION. It is not anticipated that there will be significant pollution associated with the proposed project. All materials are approved for use in marine construction.

POLICY 5.25: COASTAL MANAGEMENT COORDINATION. Coordination among State and Federal agencies will take place in review of the proposed project

3. Based on the review outlined in section (2) above, the project proposed by William and Leslie Buckalew, its associated facilities, and their effects are all consistent with the enforceable policies of the Delaware Coastal Management Program.