



STATE OF DELAWARE

DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

DIVISION OF CLIMATE, COASTAL AND ENERGY

STATE STREET COMMONS

100 W. WATER STREET, SUITE 7B

DOVER, DELAWARE 19904

**COASTAL
PROGRAMS**

PHONE
(302) 739-9283

November 15, 2024

Evelyn Maurmeyer, PhD
Coastal & Estuarine Research, Inc.
P.O. Box 674
Lewes, DE 19958

RE: Delaware Coastal Management Program — Federal Consistency Conditional Concurrence for Bryan Docking Facility (FC 2024.0003)

Dear Dr. Maurmeyer,

The Delaware Coastal Management Program (DCMP) of the Delaware Department of Natural Resources and Environmental Control (DNREC) has completed its review of the above referenced project. This letter is in response to the federal consistency certification dated and received November 16, 2023, submitted by you on behalf of Richard L. Bryan (Bryan). On May 8, 2024, the DCMP and Bryan mutually agreed to stay the six-month review period until November 8, 2024, at which time the remainder of the 6-month review commenced.

PROPOSED ACTION

Bryan proposes to utilize a U.S. Army Corps of Engineers Individual Permit for the construction of an up-to 10-foot long by 6-foot wide upland landing, an up-to 25-foot long by 3-foot wide gangway, an up-to 10-foot long by 6-foot wide floating pier, and an up-to 50-foot long by 6-foot wide floating dock to moor two boats in the Lewes and Rehoboth Canal at 575 E. Savannah Road, Lewes, Sussex County, Delaware. No proposed dredging is associated with the project.

FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT

Pursuant to the Coastal Zone Management Act (CZMA) of 1972, as amended, any applicant for a required federal license or permit to conduct an activity, in or outside of the coastal zone, that can have reasonably foreseeable effects on any land or water use or natural resource of the coastal zone of that state, shall provide a certification that the proposed activity complies with the enforceable policies of the state's approved program and that such activity will be conducted in a manner

consistent with the program. The National Oceanic and Atmospheric Administration (NOAA) is required to review and approve a proposed state management program for it to become effective. Under the CZMA implementing regulations, Federal Consistency with Approved Coastal Management Programs (15 CFR 930), subpart D, state agencies are directed to develop a list of federal license or permit activities to be included as part of the management program, with the federal license or permit activities described in terms of the specific licenses or permits involved. Any applicant for a federal license or permit selected for review by a state agency should obtain the views and assistance of the state agency regarding the means for ensuring that the proposed activity will be conducted in a manner consistent with the management program.

During the period when the state agency is reviewing the consistency certification, the applicant and the state agency should attempt, if necessary, to agree upon conditions, which, if met by the applicant, would permit state agency concurrence.

PUBLIC PARTICIPATION

In accordance with 15 CFR §930.61, the public was invited to participate in the review of the Bryan Docking Facility. Public notice of this proposed action was published in the Delaware State News, The Wilmington News Journal, and DNREC public notices list service on December 13, 2023. The public was given 30 days to comment on this notice. No public comments were received in response to this notice.

FEDERAL CONSISTENCY ANALYSIS

The DNREC DCMP coordinates the review of consistency determinations with agencies administering the enforceable and advisory policies of the program. The following agencies participated in this review:

Delaware DNREC, Division of Water
Delaware DNREC, Division of Fish and Wildlife
Delaware DNREC, Division of Air Quality
Delaware DNREC, Division of Waste and Hazardous Substances

The proposed activity is to be implemented in a manner consistent with the enforceable policies of the DCMP under Section 5.0 of the DCMP Federal Consistency Policy and Procedures document.

DNREC Division of Fish and Wildlife (DFW) noted that a population of *Apeltes quadracus* (fourspine stickleback) is found within the Lewes-Rehoboth Canal. This species is dependent on calm, shallow, heavily vegetated waters for its habitat and for spawning. Measures should be taken to avoid impacts to submerged aquatic vegetation and to decrease downstream sedimentation during construction. If aquatic vegetation is prevalent in the project area, the DFW recommends in-water work should not occur between April 1st and May 30th to minimize impacts to spawning activities.

Additionally, aerial imagery and wetland habitat maps indicate the presence of low marsh habitat (i.e., dominated by *Spartina alterniflora*). Several state-rare species of conservation concern frequently nest in low marsh habitat, including the seaside sparrow (*Ammodramus maritimus*), clapper rail (*Rallus longirostris*), and willet (*Tringa semipalmata*). DFW recommends work not occur between April 1st and July 31st to avoid impacts to marsh nesting birds.

Please be advised that the Division of Air Quality (DAQ) recommends that retrofitted on road and non-road diesel engines be used to reduce emissions associated with the project construction. This includes equipment that is used on-site, as well as equipment that is used to transport materials to and from the site. DAQ also recommends the use of dust suppressants and measures to prevent the transport of dust off-site from material stockpile, material movement, and use of unpaved roads.

Please note that the following Delaware air quality regulations may apply: Particulate Emissions from Construction and Materials Handling (7 DE Admin. Code 1106) and Excessive Idling of Heavy-Duty Vehicles (7 DE Admin. Code 1145).

CONDITIONAL CONCURRENCE

Based on its review and pursuant to 15 CFR 930, the DCMP conditionally concurs that the Bryan Docking Facility as proposed above is consistent with the policies of the DCMP.

To be consistent with the DCMP's enforceable policies, the following condition must be satisfied as they relate to enforceable policies 5.3, 5.4, and 5.20:

- The applicant shall obtain all necessary state permits/authorizations/leases regarding but not limited to the following: wetlands, subaqueous lands, and/or air quality as regulated by the State of Delaware or its delegated authorities. State permits/authorizations/leases are included in the DCMP enforceable policies and must be obtained to be consistent with these policies.

Failure to comply with 15 CFR §930.4 as it relates to the condition above will result in this conditional concurrence being considered an objection. Under this scenario, the applicant is advised that pursuant to 15 CFR part 930, subpart H, and within 30 days from receipt of this letter, a request may be submitted to the Secretary of Commerce to override the objection. In order to grant an override request, the Secretary must find that the activity is consistent with the objectives or purposes of the CZMA or is necessary in the interest of national security. A copy of the request and supporting information must be sent to the DCMP and the federal permitting or licensing agency. The Secretary may collect fees for administering and processing your request.

Pursuant to 15 CFR 930.66, Bryan shall notify the DCMP of any proposed modifications to activities after receiving a decision from the DCMP. Modifications will be subject to supplemental federal consistency review if effects to any coastal use or resource will be substantially different than originally described.

Please be advised that this federal consistency review does not negate the need for other authorizations that may be required.

Thank you for the opportunity to review and respond to the Bryan Docking Facility federal consistency certification. If you have any questions, please contact me or Mike Snyder of my staff at (302) 739-9283.

Sincerely,



Jesse Hayden, Administrator
Delaware Coastal Management Program

JH/mts

cc: FC File 2024.0003

Mike Yost, USACE

Danielle Minter, DNREC DFW

Matt Jones, DNREC DW

Tina Merrill, DNREC DAQ

Dawn Budinger, DNREC DWHS