



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

January 10, 2025

Ed Launay  
Environmental Resource Insights  
38173 DuPont Blvd.  
Selbyville, DE 19975

**RE: Delaware Coastal Management Program — Federal Consistency Certification  
Conditional Concurrence for Fishers Cove Dock Condominium (FC 2024.0044)**

Dear Ed Launay,

The Delaware Department of Natural Resources and Environmental Control (DNREC) Coastal Management Program (DCMP) has completed its review of the above referenced project. This letter is in response to the federal consistency certification dated and received July 11, 2024, submitted by you on behalf of Waterfront 624, LLC (Waterfront 624).

**PROPOSED ACTION**

Waterfront 624 proposes to utilize a U.S. Army Corps of Engineers Individual Permit for the installation of a boat lift in an existing boat slip within the Fishers Cove Dock Condominium in the Lewes and Rehoboth Canal approximately 0.08 miles northwest of the intersection of Rodney Avenue and Pilottown Road in Lewes, Sussex County, Delaware. In-water work will not occur between March 1 and June 30 to minimize impacts to fish species.

**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 Fishers Cove Dock Condominium. Public notice of this proposed action was published in the Delaware State News, The News Journal, and DNREC public notices list service on July 28, 2024. 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 Air Quality
- Delaware DNREC, Division of Fish and Wildlife
- Delaware DNREC, Division of Water
- Delaware DNREC, Division of Watershed Stewardship

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.

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. 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).

In addition, sampling conducted by DNREC Division of Fish and Wildlife (DFW) revealed that the Lewes-Rehoboth Canal supports a large number of juvenile migratory fish and is thus considered an important nursery area in the Inland Bays. Several species of particular commercial and recreational importance utilize the canal and could be impacted by this project. A primary species of concern for this project is summer flounder (*Paralichthys dentatus*) which utilize the canal as a nursery area. DFW recommends that in-water work not occur from March 1 to September 30 to allow time for young of the year to grow large enough to be less vulnerable to habitat-altering activities and then migrate out of the system. This window should minimize the number of young of the year flounder impacted by the project.

### **CONDITIONAL CONCURRENCE**

Based on its review and pursuant to 15 CFR 930, the DCMP conditionally concurs that Fishers Cove Dock Condominium 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, and 5.4.

- The applicant shall obtain all necessary state permits and authorizations including but not limited to the subaqueous lands' permits and leases, and/or marina permits as regulated by the State of Delaware or its delegated authorities.

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, Waterfront 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 Fishers Cove Dock Condominium federal consistency certification. If you have any questions, please contact me or Mike Snyder of my staff at (302) 739-9283.

Sincerely,



[Jesse Hayden \(Jan 10, 2025 15:32 EST\)](#)

Jesse Hayden, Administrator

Delaware Coastal Management Program

JH/mts

cc: FC File 2024.0044

Mike Yost, USACE

Danielle Minter, DNREC DFW

Matt Jones, DNREC DW

Tina Merrill, DNREC DAQ

Elaine Webb, DWS

Cal Hurtt, Waterfront, LLC