



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

September 3, 2025

Angela Henderson and Kathleen Kissinger
2876 Fagleyville Road
Gilbertsville, PA 19525

RE: Delaware Coastal Management Program — Federal Consistency Certification Conditional Concurrence for Henderson-Kissinger Pier and Boat Lift (FC 2025.0023)

Dear Angela and Kathleen,

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, received on March 6, 2025, and deemed administratively complete on March 13, 2025.

PROPOSED ACTION

The applicants propose to utilize a U.S. Army Corps of Engineers (USACE) Letter of Permission (LOP) to replace a pier at 33256 Mercer Avenue, Oak Orchard, Millsboro, Sussex County, Delaware. The pier is proposed to have a 104 ft x 5.5 ft wide inner section and 104 ft x 6.5 ft wide outer section. The project would also include the installation of a new 4-piling boat lift (12ft6in c/c pilings). To avoid impacts to sensitive aquatic species, no in-water work will occur from March 1 to September 30.

FEDERAL CONSISTENCY UNDER THE COASTAL ZONE MANAGEMENT ACT

Pursuant to the Coastal Zone Management Act (CZMA) of 1972 administered by the National Oceanic and Atmospheric Administration (NOAA), 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 NOAA-approved program and that such activity will be conducted in a manner consistent with the program. 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.

PUBLIC PARTICIPATION

In accordance with 15 CFR 930.61, the public was invited to participate in the review of the Henderson-Kissinger Pier and Boat Lift project. Public notice of this proposed action was published on April 6, 2025, in the Daily State News, The News Journal, and on the DNREC public notices website. The notice was also published in Spanish on the DNREC public notices website. The public was given 30 days to comment on this notice. No public comments were received.

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:

DNREC, Division of Air Quality
DNREC, Division of Fish and Wildlife
DNREC, Division of Water

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 DNREC 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 advises project managers to minimize air emissions from vessel engines and power equipment by avoiding unnecessary engine idling and ensuring the use of fuels that meet quality standards, such as ultra-low sulfur diesel, whenever possible, throughout the duration of the project.

Construction operations for this project can emit pollutants such as volatile organic compounds (VOCs), nitrogen oxides (NO_x), and fine particulate matter (PM_{2.5})—all of which are associated with adverse impacts to air quality that can affect human health. Delaware currently exceeds federal health-based standards for ozone and PM_{2.5}, and Sussex County remains designated as a marginal nonattainment area for the 8-hour ozone standard. Please note that emissions associated with federal actions in marginal nonattainment areas must remain below the annual thresholds in the General Conformity Rule under the Clean Air Act (40 CFR § 93.153).

The following Delaware air quality regulations may apply: Particulate Emissions from Construction and Materials Handling (7 DE Admin. Code 1106), Open Burning (7 DE Admin. Code 1113), Conformity of General Federal Actions to the State Implementation Plan (7 DE Admin. Code 1135), Excessive Idling of Heavy-Duty Vehicles (7 DE Admin. Code 1145), and Regulations Governing the Control of Noise (7 DE Admin. Code 1149).

CONDITIONAL CONCURRENCE

Based on its review and pursuant to 15 CFR 930, the DCMP conditionally concurs that the Henderson-Kissinger Pier and Boat Lift project 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 related to enforceable policies under Section 5.4:

The applicant shall obtain all necessary state permits, authorizations, and/or leases related to subaqueous lands as regulated by the State of Delaware. 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, the applicant 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. If you have any questions, please contact me or Stephanie Zmina of my staff at (302) 739-9283.

Sincerely,



Jesse Hayden (Sep 3, 2025 10:24:44 EDT)

Jesse Hayden, Administrator
Delaware Coastal Management Program

JH/sz

cc: File FC 2025.0023
Evelyn Maurmeyer, Coastal and Estuarine Research, Inc
James Colligan, USACE
Tina Merrill, DAQ
Faith Garcia, DFW
Matt Jones, DW
Kaylee Groce, DW