



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

August 15, 2025

Edward Launay
Environmental Resource Insights
38173 DuPont Blvd / P.O. Box 169
Selbyville, DE 19975

RE: Delaware Coastal Management Program — Federal Consistency Certification Concurrence for Kingfisher Residential Community (FC 2025.0030)

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, received and deemed administratively complete by this office on March 20, 2025.

PROPOSED ACTION

West Selbyville Development, LLC, proposes to utilize a U.S. Army Corps of Engineers (USACE) Nationwide Permit 29 to modify the Bear Hole Tax Ditch Prongs 6 and 7 in preparation for a 322-unit residential development in the town of Selbyville, Delaware, north of State Route 54 and west of Bear Hole Road (Sussex County Tax Map Parcels 533-11.00-35.00 and 533-18.00-5.00).

The tax ditch modifications include the addition of six stormwater outfalls with riprap armor protection. Each stormwater outfall involves the placement of approximately 10.85 cubic yards of riprap and geotextile fabric depressed below the invert of the channel matching the existing channel bottom elevation. Additionally, a total of seven existing farm road culvert crossings will be removed, six from Prong 6 and one from Prong 7. After removal, newly graded channel banks will match the undisturbed channel cross-section immediately upstream and downstream of each crossing, and the newly established bank will be seeded and protected by erosion control matting. Cumulatively, 280 linear feet of farm road crossing will be removed. The increase in stream aquatic habitat provided discounting the area inside the road culverts is 2,158 square feet (0.049 ac).

Finally, a portion of Prong 6 will be relocated. Clean select fill (824 cubic yards) would be placed in 1,525 linear feet of the ditch, and 1,325 feet of new perennial stream channel would be constructed. The tax ditch relocation results in a net gain of 0.1222 acre of aquatic area. The design and execution of this channel relocation will be done in accordance with an approved Court Order Change and Letter of No Objection from DNREC Division of Watershed Stewardship Tax Ditch Program. Delineated palustrine forested wetlands on site will remain undisturbed by the development project.

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 Kingfisher Residential Community 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 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
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 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.

Constructions 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).

The Division of Fish and Wildlife (DFW) recommends that tree clearing not occur between April 1st and July 31st, to reduce impacts to nesting birds and other wildlife species that utilize forests for breeding. A minimum 100-ft upland buffer around the perimeter of wetlands is also recommended, to reduce the quantity of sediments, pollutants, and other non-point source material that may affect the function and integrity of habitat and the condition and survivability of aquatic organisms.

CONCURRENCE

Based on its review and pursuant to 15 CFR 930, the DCMP concurs that the Kingfisher Residential Community project as proposed above is consistent with the policies of the DCMP.

Pursuant to 15 CFR 930.66, West Selbyville Development, LLC 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 (Aug 15, 2025 11:05:37 EDT)

Jesse Hayden, Administrator
Delaware Coastal Management Program

JH/sz

cc: File FC 2025.0030
Mike Yost, USACE
Tina Merrill, DAQ
Faith Garcia, DFW
Matt Jones, DW
Amy Reed, DWS