



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**

OFFICE OF THE
SECRETARY

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DOVER, DELAWARE 19901

PHONE: (302) 739-9000
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Secretary's Order No. 2011-W-0033

**Re: APPLICATION OF CREEK'S END HOME OWNERS ASSOCIATION, INC.
FOR SUBAQUEOUS LANDS ACT AUTHORITY TO EXPAND THE CREEK'S
END MARINA, MILLSBORO, SUSSEX COUNTY**

Date of Issuance: July 12, 2011

Effective Date: July 12, 2011

Background

This Order considers the Creek's Ends Homeowners Association Inc.'s (Applicant) March 19, 2009 application for a minor marina alteration permit and subaqueous land lease under the Subaqueous Lands Act, *7 Del. C. Chap. 72* (SLA), and the Department's SLA Regulations, *7 DE Admin. 7504*, and the Department's Marina Regulations, *7 DE Admin 7501*.

Applicant seeks to expand its Creek's End Marina (Marina) by adding 16 slips for a total of 32 slips, which would be used by the Creek's End community. The Marina is located at Gadwell Drive, Millsboro, Sussex County. It is on Guinea Creek, a tidal waterbody that flows into Rehoboth Bay.

The Department granted the Marina's its original SLA authority in Secretary's Order No. 96-W-49 issued December 20, 1996 (1996 Order), which imposed a prohibition on any future expansion. In a May 31, 2011, Hearing Officer's Report, the Department's presiding hearing officer recommends approval of expansion and granting the requested SLA authority, which is consistent with the recommendations by the Department's experts within the Division of Water's

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Wetlands and Subaqueous Land Section (WSLS). I adopt the Report to the extent it is consistent with this Order.

Findings and Reasons

The Report discusses in detail the procedural history of Applicant's Marina, particularly the 1996 Order's prohibition on any future growth. The Report recommends that the prohibition does not bar future growth because it was removed by the Department's January 9, 2008 lease (2008 lease), which allowed an expansion of the dock facilities, no longer prohibited any future growth, and superseded the 1996 Order. The Report also finds that the Marina's minor marina permit modification to add 16 slips for a total of 32 slips is supported based upon the changed circumstances since the 1996 Order.

The origin of the 1996 Order's prohibition was a record that had insufficient showing of a demand for the boat slips. The Department in the 1996 Order reviewed a record of speculative demand provided by the Marina's prior owner, George Harrison, the developer of Creek's End subdivision.¹ The 1996 Order considered an application for a 24 slip Marina, but it was not supported by a showing of sufficient demand because the community was still under development. The proposed 24 slip Marina was opposed by local residents, particularly from Winding Creek Village. Indeed, some of the Winding Creek Village's residents also oppose the present application. The 1996 Order approved the Marina, but only on the condition that there was a showing of a demand for the boat slips. The 1996 Order also limited the Marina to only 16 slips, and prohibited any future expansion, including of the facilities.

The Report indicates that Creek's End now is almost fully developed, and under the ownership of the homeowners association and that there is considerable demand for the boat slips above even the 16 additional requested. The Report finds that in 2008 lease the Department

¹ Creek's End was known as 'Seafarer's Village East.'

lifted the 1996 Order's prohibition because it approved a 52' dock extension. This growth in the docking facilities was not opposed or the subject of any public hearing. While this dock extension relocated 4 slips without any increase the total number of slips in the Marina above the 1996 Order's 16, it nevertheless approved a growth and it did not retain any prohibition against any future expansion of dock facilities. I agree with the Applicants that Secretary Hughes' approval of the lease and its expansion of the dock included language that expressly supersedes the 1996 Order's prohibition. Consequently, the prohibition against any future expansion no longer applied after the Department's 2008 lease for the 52' dock extension.

The Report also states that the Department has the discretion to remove the prohibition against any expansion, which was an informal policy based upon the facts in the record of the 1996 Order. As noted above, in 1996 there was considerable doubt on whether there was any actual demand for the boat slips because the residential development was just beginning. In contrast, the Report finds that the record in this permit application provides sufficient support for the demand for a total of 32 slips or more slips based upon the waiting list for slips. The Report also finds that the recommended record supports that the Marina has a sufficient support for the additional slips and the minor marina permit alteration to increase the dock size to allow 32 slips will not unduly harm the environment if Applicant obeys the permit conditions drafted by WSLs' experts. Thus, the Report, based upon WSLs' recommendation, also considers the application as complying with the environmental requirements imposed by the SLA and Marina Regulations.

The current opposition to the permit application was from residents of the planned community of Winding Creek Village, which is located across from the Marina along the opposite bank of Guinea Creek. The comments opposed the application based upon the

prohibition and raised concerns about water quality from increased boat traffic and the turbulence from powerboats' propellers, which could stir up bottom sediments. The Department shares the environmental concerns with the Guinea Creek's water quality, which is regulated as part of the Inland Bays watershed. Consequently, the Department's experts have determined that the proper operation of the Marina pursuant to the many conditions should provide the necessary level of environmental protection of the water quality.

The public comments also raised concerns with the increased usage of powerboats caused by an expansion. The legal right of Creek's End powerboat owners to use Guinea Creek will not be impacted by this SLA approval. The Marina will allow the boats to be moored. Creek's End residents who own powerboats may use Guinea Creek now. The use of Guinea Creek is possible from the Marina's boat ramp or other locations. It was pointed out at the public hearing that the expansion would reduce the need to trailer boats to other locations as another environmental benefit for the expansion. The Department is mindful of all environmental impacts of its actions as part of the SLA's overall environmental impact. Similarly, I find Applicant's recognition as a "Green Marina" is an important consideration. The Marina's voluntary participation in the Department's Green Marina program, which the Department implemented to reduce adverse environmental impacts from marina operations, supports this grant of this SLA authority as well. The Marina has operated as a Green Marina for several years and this high standard of operation provides further support for this approval. Thus, these factors, weighed together, support the issuance of the SLA authority requested.

The Marina's expansion will use public subaqueous lands for a 192' dock extension to allow mooring slips for 16 additional small boats during the boating season. WSLS has determined that this usage is consistent with the Subaqueous Lands Act's considerations, as also

set forth in the Department's SLA Regulations. I agree with the Report and direct that the SLA authority be granted as recommended by the Department's experts in WSLS.

Conclusions

The Department, based upon the record and the findings and reasons set forth above, concludes as follows:

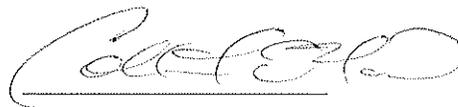
1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding based on the record that supports granting Applicant the SLA authority to expand the Marina and to use subaqueous lands, subject to the conditions imposed by WSLS;

2. The Department provided adequate public notice of the application and the public hearing, as required by the law and the Department regulations;

3. The Department held a public hearing and has considered all timely and relevant public comments in making its determination;

4. The Department finds that the SLA authority granted reflects changed circumstances from when the 1996 Order was issued and that the 2008 lease for the dock extension removed any prior prohibition of an expansion of the Marina;

5. The Department shall publish this Order on its public web site and provide such other service and notice as required by law and Department regulation or otherwise determines necessary and appropriate.



Collin P. O'Mara
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire
Senior Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: APPLICATION OF CREEK'S END HOME OWNERS ASSOCIATION FOR
SUBAQUEOUS LANDS ACT AUTHORITY TO EXPAND THE CREEK'S END
MARINA ON GUINEA CREEK NEAR MILLSBORO, SUSSEX COUNTY

DATE: May 31, 2011

I. PROCEDURAL HISTORY AND BACKGROUND

This Report provides the Secretary of the Department of Natural Resources and Environmental Control (Department) with recommendations on Creek's End Homeowner Association's (Applicant) March 19, 2009 application for authority under the Subaqueous Land Act (SLA), 7 Del. C. Chap 72, and Department Regulations issued thereunder in the SLA Regulations, 7 *DE Admin.* 7504, and the Marina Regulations, 7 *DE Admin* 7501.

Applicant seeks a minor marina alteration permit and lease in order to expand its Creek's End Marina (Marina), which is a 16 slip 'residential or planned community marina' for exclusive use by residents of the Creek's End community¹ near Millsboro, Sussex County. The Marina is along Guinea Creek, which is a tidal waterway that flows into Rehoboth Bay near Long Neck. The Marina was approved for 16 slips Secretary's Order No. 96-W-49, issued December 20, 1996 (1996 Order). The Department's initial approval was granted to George Harrison, the developer of Creek's End.

¹ The planned community originally was called "Seafarer's Village East."

The application seeks to construct a 6' x 192' dock extension at the end of the existing 6' x 192' dock. The proposed extension would have eight 20'x20" finger piers and 16 stand alone pilings. The extension would allow 16 additional slips for small boats, and the Marina would have a total of 32 slips. The Marina uses approximately 2,340 square feet of public subaqueous lands for a 25' x 20' boat ramp, a 67' x 6' main pier, a 6' x 192' main dock and 8 20' by 20 inch finger piers and 18 stand alone piles.

The 1996 Order was based upon an August 1995 application. The application was opposed by local residents, primarily from Winding Creek Village, which is the residential community on the other side of Guinea Creek. The Department held a May 30, 1996 public hearing on the application. In the 1996 Order the Department approved construction on the condition that showing of need for the slips were approved by the Department. In addition, the 1996 Order reduced the Marina's requested size from 24 to 16 slips, and indicated that the "future expansion of berthing or launching facilities at Creek's End is prohibited."

On February 5, 1997, the Department issued a SLA lease for a term of ten years. On June 18, 1997, the Department issued a permit for the Marina's construction based upon a showing of proof of demand for at least five boat slips. On April 10, 2003, the marina permit and lease was transferred from George Harrison to the Applicant.

On April 23, 2007, Applicant submitted an application for SLA authority, which included renewal of the lease and moving four slips from the landward side of the existing dock to the seaward side of a 52' dock extension. Applicant requested approval of the slip locations because the four slips located on the inland side of the dock did not have enough water depth to be used by certain vessels. This SLA application was the subject of public notice, but the Department did not receive any comments or any request for a public hearing. The Department did not hold

a public hearing, but on January 9, 2008, then Secretary of the Department, John Hughes, signed a new subaqueous lands lease for the Marina. This lease also approved the requested 52' dock extension for 4 additional slips and the removal of 4 slips. Consequently, the Marina's total number of slips authorized remained 16 as originally authorized.

The above procedural history of the Marina's SLA authority is reviewed because of the 1996 Order's prohibition of future expansion and because the current application seeks an expansion of the number of slips from 16 to 32 by the construction of a 192' dock extension.

Applicant's current application was revised on September 4, 2009, when Applicant submitted revised plans that angled the proposed dock extension landward. This revision was necessary because WSLS indicated to the Applicant that the original plans had the dock extending beyond more than 20% of width of the waterway's width, which would violate the SLA Regulations. On September 23, 2009, the Department published legal notice of the revised application. DNREC Ex. 2.

The Department received numerous written public comments in response and requests for a public hearing. DNREC Ex 3. The Department published on April 21, 2010 notice of a public hearing, and I presided over the public hearing held May 17, 2010 at the Indian River Senior Center in Millsboro. DNREC Ex. 4. The public comment period was kept open until June 7, 2010 for written comments.

Following the hearing, I requested that WSLS prepare a recommendations, which could include the draft of any recommended SLA authority to be approved by the Secretary. WSLS prepared the draft permit and lease attached hereto in response. I find that the record is sufficiently complete, and that it supports this recommended report's recommended approval of the requested SLA authority and issuance of the permit and lease, as drafted by WSLS.

II. SUMMARY OF THE RECOMMENDED RECORD

I recommend that the Department's record contain the following: 1) the verbatim transcript of the May 17, 2010 public hearing; 2) the documents identified and introduced at the public hearing including during the extended time period for public comments that ended June 7, 2010, 3) the post hearing information provided by the experts from WSLs as attached hereto; and 4) this Report.

I also reviewed the Department's files for the regulatory history on the Marina. As noted above, the original SLA authority was issued to George H. Harrison, Jr. on behalf of Pine Acres, Inc. Applicant's counsel requested that the documents in the Department's permit files be included in this record. My review finds no reason to include the entire record from that permit process as part of this record, although I have included certain facts from the files in this Report. I find that the inclusion of the Department's entire files would be unduly burdensome to include in this record, but I find no real prejudice to the Applicant because it can always supplement the record should an appeal be taken. Moreover, it is the responsibility of any applicant to present all documents for the record before the public hearing, such as Applicant provided at the public hearing with more detailed plans of the dock extension. The January 9, 2008 issuance of a new lease to the Applicant for the 4 slip realignment and dock extension also contains information relevant to this application.

At the public hearing, the Department's representatives, Laura Herr, Program Manager of WSLs, and Joanne Lee, Environmental Scientist, described WSLs' role in the SLA permit application process and identified the following relevant documents from WSLs' files as exhibits: Applicant's SLA permit application (DNREC Ex. 1); the public notice of the application (DNREC Ex. 2); the public comments received from the notice (DNREC Ex. 3); the

public notice of the public hearing (DNREC Ex. 4); Secretary's Order No. 96-W-0049 (DNREC Ex 5); the memo assigning the presiding hearing officer (DNREC Ex. 6); the SLA (DNREC Ex. 7); the Department's SLA regulations (DNREC Ex. 8), and the Department's Marina Regulations (DNREC Ex.9).

The Applicant's representatives, Michael Malkiewicz, an attorney with the law firm of Barros, McNamara, and Malkiewicz, and Evelyn Maurmeyer, Ph.D., an environmental consultant with Coastal and Estuarine Research, spoke. Mr. Malkiewicz discussed the history of the Marina and the reasons supporting the application. He also mentioned an Attorney General's opinion on the application being acceptable for filing despite the prior Secretary's Order's prohibition of any further expansion. He explained that the prior Secretary's Order was before there was any demand for the boat slips by property owners. He indicated that now the existing 16 boat slips were filled and there was a waiting list with 29 persons who wanted slips, including some who had waited for over 11 years for a boat slip. He claimed that the Applicant did not have any boating citations or environmental violations.

Dr. Maurmeyer discussed the application and the public comments. She replied to the public comments that the proposed expansion would not create the largest marina in the Inland Bays or even Rehoboth Bay, and noted the presence of larger marinas located at Angola By The Bay, Angola Beach Estates, Burton's Prong, Herring Creek, The Boat Hole, the Love Creek, Rehoboth Bay Community Marina, Leisure Point, Joy Beach, and Mariners Cove. She also noted the application's revision, which realigned the dock to angle the dock so as to comply with the SLA regulations, which prohibit a structure extending more than 20% of the width of the waterbody, as measured from MLW. She indicated that the survey by Coast Survey established that Guinea Creek is 415 to 419 feet wide at MLW, and that the proposed extension would

extend 81 to 83 feet from the MLW, which is not more than 20% of Guinea Creek's width at the Marina. She also noted that the Department's Division of Soil and Water Conservation in 1999 determined that the navigational channel is approximately 60' in width and was located around the center line of the waterway, which she indicated was approximately 100' to the proposed dock extension. She addressed the concerns with depth for vessels and noted that the guidelines set a minimum depth of 18" as needed for navigation. She indicated that she had conducted low water depth measurements, one in February and one in July 2009, and found depths to be approximately 1.9' to 2.2'. Coast Survey also did measurements on May 2010 that recorded depths of 1.7' to 2.3'. She explained that the types of boats that would use the marina would be small pontoon boats and power boats ranging up to 24' in length. Dr. Maurmeyer explained that the Applicant had sought input from the Department's Shellfish and Recreational Water Program, and from the Natural Heritage and Endangered Species Program and that neither of these programs raised any objection to the application.

The members of the public who spoke included Mr. Teichert, who expressed his support and who indicated that the 32 total boats after the expansion would represent only 1/3 of the boats owned by Winding Creek Village residents. Teichert Ex. 1. Mr. Clark spoke in support of the expansion as President of Applicant. He indicated that Creek's End had 72 lots sold and 64 houses built and a resident population of 150. He said that the Applicant assumed ownership of the Marina in 2002 and that on September 17, 2008 was awarded the Department's Green Marina certification. He noted that many of the residents were forced to rent slips elsewhere and that the boat ramp was too shallow for their use. Clark Ex. 1. Joyce Bean spoke as vice-president of the Applicant and as president of the townhouse association's 14 units. She noted that the residents would use more fuel taking their boats to other locations than they would use if

the expansion was approved. Mr. Davis spoke in favor of the expansion and commented that he used the boat ramp and that Massey's Landing was the closest marina that could be used.

Mr. Detwiler, a resident of Winding Creek Village, spoke in opposition to the expansion and noted that the Marina had unlawfully added additional dock space through a floating dock.

On June 7, 2010, Applicant's counsel provided a response to the public comments at the hearing and the legal issues raised by the application.

As noted above, WSLS prepared a draft permit, which is their recommended action and includes conditions to protect the environment from the risk of harm from the expansion. I consider the record to contain sufficient information to support a final decision by the Secretary.

III. RECOMMENDED FINDINGS AND DISCUSSION

As noted above, the Marina expansion is supported by the residents of Creek's End. These residents want more slips and the record indicates a 29 person waiting list for boat slips. The expansion is opposed by residents of Winding Creek Village across the Guinea Creek from the Marina, who do not want the expansion because of the fear of increased boat usage and environmental concerns with water quality. Moreover, they rely on the Department's 1996 Order and its prohibition against future growth. The Winding Creek Village residents raise possible problems with the consequences of more boats moored at the Marina and using Guinea Creek.

The first issue to address is the prohibition in Secretary's Order No. 96-W-49 to any future expansion. First, I agree with Applicant that a plain reading of the 1996 Order does not contain any prohibition barring Applicant from seeking an expansion. If the Department's intent in 1996 was to prohibit any future applications for expansion, then the Department could have included permit language that explicitly prohibiting the Marina from seeking an expansion. Absent the Department's Order or permit prohibiting Applicant from seeking an expansion, I

conclude that Applicant was not prohibited by any binding agreement from seeking an expansion.

The question of whether Secretary's Order No. 96-W-49 should be interpreted to bar the Department from approving any expansion is different than the right to seek relief. I find that Secretary Order No. 96-W-49 represented the Department's policy at that time, which was based upon the record developed for that permit. The record was based upon a proposed residential community before the current houses were built and before their residents wanted boat slips. The Department, as an administrative agency, is able to change its position when there is sufficient support for the change. I find that the record for this expansion provided sufficient support to allow the Department to change its position as expressed in the 1996 Order if the Department still had a prohibition still in effect. The Applicant provided sufficient support to show that its application satisfied the Marina Regulations and SLA Regulations.

I also find support that the Department already changed its position on prohibiting any future expansion when it approved on January 8, 2008 lease, which allowed a 52' dock extension to be used for 4 new slip locations, albeit relocated seaward of the dock from their former landward locations. While the Marina's total number of slips remained the same at 16, nevertheless the Department approved an expansion of berthing facilities. Clearly adding a 52' dock extension to allow the relocation of four slips is an expansion from the facilities authorized by Secretary's Order No. 96-W-49. I also agree with the Applicant's interpretation of the Department's approval, which indicates that it was intended to supersede the prior approvals. I conclude and find that this approval could reasonably be interpreted as revoking Secretary's Order No. 96-W-49's prohibition of any future expansion.

I find that the application has met the technical requirements of the Department's Regulations. The proposed expansion will not result in any undue harm to the environment or public safety. The additional 16 boat slips will be limited to small shallow draft boats under 24' in length. The draft is limited to only 18" at low tide and I agree that this limits the type of boats to be used, but it also means that power boats will stir up bottom sediment, particularly at low tide. Should the water quality of Guinea Creek show signs of distress, then the Department may take action to revoke usage by certain boats or take other steps to protect the environment. I find that the addition of 16 boats, which already could be using Guinea Creek from the boat ramp access, does not provide a ground to deny the permit. The draft permit provides the necessary and appropriate conditions to protect the environment from undue harm from the Marina's operations. Consequently, I recommend approval and issuance of the draft permit prepared by the experts in WSLs as attached hereto.

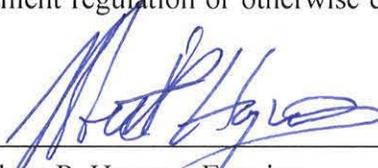
IV. RECOMMENDED CONCLUSIONS

Based on the recommended record set forth in this Report, I recommend that the Department approve the following conclusions:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding based on the record, which provides adequate reasonable support for approval of the SLA authority;
2. The Department provided adequate public notice of the application and the public hearing as required by the law and the Department regulations;
3. The Department held a public hearing in a manner required by the law and its regulations and has considered all timely and relevant public comments in making its determination;

4. The Department grants the SLA permit for use of subaqueous lands and the expansion of the Marina as proposed based upon the draft permit prepared by WSLS, which shall also be included in this record; and that

5. The Department shall publish this Order on its public web site and provide such other service and notice as required by law and Department regulation or otherwise determines necessary and appropriate.



Robert P. Haynes, Esquire
Senior Hearing Officer

Marina Permit No.: MP-073/09
- Associated Subaqueous Lease No: SU-395/09
- Previous Marina Permit: MPR-0008/97
- Previous Subaqueous Lands Leases: SL-2810/95,
SL-2810/95S, SL-203/07

Date of Issuance:
Expiration Date:
Amended Date:
Tax Parcel No.: 2-34-24.00-395.00

**MARINA PERMIT
GRANTED TO THE CREEK'S END HOME OWNERS ASSOCIATION, INC.
TO CONSTRUCT A 16 SLIP ADDITION TO AN EXISTING MARINA
TO CREATE A 32 SLIP RESIDENTIAL MARINA AND
TO OPERATE THE 32 SLIP MARINA IN GUINEA CREEK
AT GADWALL DRIVE, CREEK'S END, LONG NECK,
MILLSBORO, SUSSEX COUNTY, DELAWARE**

Creek's End Home Owners
c/o Stephen Clark
206 Wood Duck Drive
Millsboro, Delaware 19966

Is hereby authorized to construct 16 additional slips adjacent to an existing marina, expanding the marina to a 32 slip marina, and to operate the 32 slip marina in Guinea Creek, Long Neck, Sussex County, Delaware. This Permit authorizes the following activities:

**TO CONSTRUCT THE FOLLOWING STRUCTURES TO CREATE 16 ADDITIONAL
SLIPS AT THE CREEK'S END MARINA:**

- A 192 foot long by 6 foot wide fixed dock,
- Eight 20 foot long by 20 inch wide finger piers, and
- Sixteen stand-alone pilings;

**THE EXPANDED, 32 SLIP RESIDENTIAL MARINA WILL CONSIST OF THE
FOLLOWING STRUCTURES:**

- A 50 foot long by 20 foot wide boat ramp,
- A 96 foot long by 6 foot wide pier,
- A 384 foot long by 6 foot wide dock,
- Sixteen 20 foot long by 20 inch wide finger piers,
- One 30 foot long by 12 foot wide floating boat dock, and
- Thirty-four stand-alone pilings.

Pursuant to the provisions of 7 Del. C. Chapter 72 and the "Delaware Marina Regulations" and "The Regulations Governing the Use of Subaqueous Lands" permission is hereby granted on this _____ day of _____ A.D. 2011, to operate the above-referenced marina in accordance with the approved plans (5 sheets) as approved on January ??, 2011, and the application dated February 25, 2009 and received by this Department on March 19, 2009, with additional information received September 8, 2009; and the Secretary's Order No. ?, dated ???.

Whereas, pursuant to the provisions of 7 Del. C. 7203, the Department's "Regulations Governing the Use of Subaqueous Lands" and the "Marina Regulations" the Secretary of the Department of Natural Resources and Environmental Control through his duly authorized representative finds that it is not contrary to the public interest if this project is approved subject to the terms and conditions.

This approval is in accordance with the plan and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.

This Permit is issued subject to the following conditions:

SPECIAL CONDITIONS

1. The permittee shall operate and maintain the Creek's End Marina in accordance with the approved Operation and Maintenance (O&M) Plan, received by the Wetlands and Subaqueous Lands Section (WLS) on June 25, 2008 and approved by the WLS June 27, 2008.
2. Within 90 days of the issuance of this Marina Permit, the permittee shall submit an updated O&M Plan to the Wetlands and Subaqueous Lands Section for review and approval. Every four years thereafter the permittee shall submit a current O&M plan for review and approval by the Wetlands and Subaqueous Lands Section. Operation of the marina is only authorized with a current, approved O&M Plan.
3. The marina shall provide a copy of the approved "Operations and Maintenance Plan for the Pot-Nets Seaside Community Marina" and "Marina Rules and Regulations" to each marina patron.
4. The marina shall post the following information in a prominent location in the marina:
 - a) The approved Operations and Maintenance Plan, including all boater rules and regulations;
 - b) The location of the handcart for transfer of portable waste tanks;

- c) The location of the spill containment materials and information regarding how to access and use the materials;
 - d) A sign stating that "Any discharge, by any means, of untreated or inadequately treated vessel sewage into or upon the waters of any marina, boat docking facility or tidal water of the State is prohibited."
5. None of the authorized structures shall extend channelward farther than 20 percent of the width of Guinea Creek at mean low water.
 6. A total of 32 vessels may be berthed at the marina. No more than one vessel may be berthed in each slip.
 7. The Lease authorizes the construction of the structures described herein. The construction of any additional boat docking structures, including boat lifts or floating platforms, will require additional, separate authorization from the Wetlands and Subaqueous Lands Section.
 8. All boaters shall navigate vessels in a manner that does not cause the erosion of stream banks and wetlands.
 9. The previously created 3,706 square feet of tidal wetlands shall be maintained to compensate for impacts associated with the marina. If the created tidal wetland is disturbed by boat wakes or other human activities, corrective activities, such as replanting with suitable plant material, regrading, or removal of undesirable vegetation may be required.
 10. No dredging of the marina is authorized by this Permit.
 11. All fueling of vessels shall be undertaken in a manner that prevents discharge of pollutants into the waterway. All fuel shall be transported within a certified fuel container. Any incidental drips or spillage shall be contained and cleaned up before discharge into the waterway.
 12. The marina shall maintain a supply of spill containment material to contain discharges of fuels, wastes or toxic materials into surface waters. The spill containment equipment shall be available to marina patrons for use in case of emergency and/or accidental spillage. The patrons shall be notified of the location of and how to access and use the containment materials.
 13. In case of fuel spills, the marina shall notify the Department of Natural Resources and Environmental Control Emergency Response and the U.S. Coast Guard.
 14. In accordance with the approved Operations & Maintenance Plan, fire extinguishers and personal flotation devices shall be placed at intervals throughout the marina.

15. This Permit does not authorize any major vessel maintenance or repair activities at the marina, whether by marina personnel, subcontractors or vessel owners. Only minor maintenance, such as minor washing, electrical and minor mechanical work, is authorized. No pressure washing, bottom or hull scraping, sanding or painting, or major engine overhauls are authorized. All vessel maintenance must be managed to prevent discharge of pollutants into the environment.
16. All materials used in maintenance and any wastes generated from maintenance activities must be stored, handled and disposed properly, and in compliance with Department regulations.
17. No creosoted treated lumber shall be used in the construction of the marina.
18. Piling must be installed by driving or vibration methods. The installation of piling by jetting of sediments using high pressure water is prohibited.
19. No portion of the authorized structures shall exceed the dimensions identified on Page 1 of this Permit.
20. The permittee and contractor shall at all times maintain in good working order, and operate as efficiently as possible, all systems and equipment used for construction activities or to achieve compliance with the terms and conditions of this Permit.
21. The permittee shall notify the Department, in writing, at least fifteen (15) working days prior to the date that the newly authorized slips become operational. The permittee shall not commence operation of the new marina sections until a pre-startup inspection has been conducted by Department personnel to verify that all construction has been performed in accordance with the documents identified on Pages 2 of this Permit. Based upon the results of the pre-startup inspection, the Department will either:
 - a. grant written approval of the marina facility as constructed, so that marina operations can commence, or
 - b. require the permittee to perform additional construction and modification of marina facilities to bring them into compliance with the plans and specifications presented in the permit application. The permittee must complete any additional work that may be required prior to seeking approval to commence operations.
22. In the case of noncompliance with State regulations or Permit conditions, the Permittee shall report to the Department:
 - a. Orally, at the time the Permittee becomes aware of any noncompliance which may endanger public health or the environment at (302) 739-9943 during normal working hours, or (800) 662-8802 after normal working hours, and

- b. In writing, as soon as possible, and within five (5) days of the date the Permittee knows or should know of any noncompliance, unless this period is extended by the Department. This written notification shall contain:
- (i) A description of the condition of noncompliance and its cause, and
 - (ii) The period of noncompliance, including exact dates and times, or if not yet corrected, the anticipated time the noncompliance is expected to continue and the steps being taken to reduce, eliminate and prevent recurrence of the non-complying condition.

23. The permittee shall furnish to the Department within a reasonable time, any information requested, including copies of records, which may be used by the Secretary to determine compliance with this Permit or the Marina Regulations. Knowingly making any false statement or supplying false information may result in the imposition of criminal penalties as provided for in 7 Del. C., §6015.
24. The provisions of this Permit are severable, and if any provision of this Permit, or the application of any provision of this Permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this Permit, shall not be affected thereby.

GENERAL CONDITIONS

1. The work authorized herein shall be completed in accordance with the terms and conditions of the Department of the Army Individual Permit.
2. This Permit is granted for the purpose of expanding the existing marina to provide access for 32 vessels for recreational use at the Creek's End Marina, as stated in the Permit application. Any other use without prior written approval shall constitute reason for this Permit being revoked.
3. The Permittee and contractor shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
4. The activities authorized herein shall be undertaken in accordance with the Permit conditions, the final stamped and approved plans, and with the information provided in the permit application.
5. A copy of this Permit and the stamped approved plans shall be available on-site during all phases of construction activity.
6. The conditions contained herein shall be incorporated into any and all construction contracts associated with the construction authorized herein. The Permittee and contractor are

responsible to ensure that the workers executing the activities authorized by this Permit have full knowledge of, and abide by, the terms and conditions of this Permit.

7. The permittee shall protect and save the State of Delaware harmless from any loss, cost or damage resulting from the activities authorized herein.
8. The issuance of this Permit does not constitute approval for any activities that may be required by any other local, state or federal government agency.
9. The issuance of this Permit does not imply approval of any other part, phase, or portion of any overall project the Permittee may be contemplating.
10. This Permit authorizes only the activities described herein. Modifications to the project may require a supplemental approval from this office prior to the initiation of construction. A determination of the need for a supplemental approval will be made by this office pursuant to the permittee submitting written notification and revised plans indicating project changes. Failure to contact the Department prior to executing changes to the project shall constitute reason for this Permit being revoked.
11. Representatives of the Department of Natural Resources and Environmental Control shall be allowed to access the property to inspect all work during any phase of the construction and may conduct pre and post-construction inspections, collect any samples or conduct any tests that are deemed necessary.
12. The activities authorized herein shall be conducted so as not to violate the current State of Delaware's Surface Water Quality Standards.
13. All construction materials, waste, or debris associated with this activity shall be properly disposed of and contained at all times to prevent its entry into waters or wetlands. Construction materials shall not be stockpiled in subaqueous lands or wetlands.
14. Disturbance of subaqueous lands or wetlands adjacent to the authorized structures or activities is prohibited. Disturbance of subaqueous lands or wetlands in the path of construction activity shall be minimized. Any temporarily impacted subaqueous lands or wetlands shall be returned to pre-disturbance elevations and conditions.
15. The permittee and contractor shall employ measures during construction to prevent spills of fuels, lubricants or other hazardous substances. In the event of a spill, the Permittee and contractor shall make every effort to stop the leak and contain the spill, and shall immediately contact the Hazardous Spill Response Team (HAZMAT) at 1-800-662-8802 and this office at (302) 739-9943. The Permittee and contractor are responsible to comply with all directives to contain and clean up the spilled material(s) as stipulated by the HAZMAT team, and to restore the site as may be required by this office.

16. None of the construction activities authorized herein shall occur after the construction expiration date identified on Page 1 of this Permit. The Permittee may file one construction expiration date extension request of up to one (1) year if necessary to complete the authorized work. Such requests must be received by the Department at least thirty (30) days prior to the construction expiration date.
17. The permittee shall notify the Wetlands and Subaqueous Lands Section prior to the commencement of the work authorized by this Permit.
18. The permittee shall maintain all authorized structures and activities in a good and safe condition.
19. Any actions, operations or installations which are found by the Department to be contrary to the public interest may constitute reason for the discontinuance and/or removal of said action, operation or installation. Removal and restoration shall be at the expense of the Permittee and/or upland property owner within thirty (30) days of receipt of written notice of revocation and demand for removal.
20. This Permit is personal but may be transferred provided the permittee provides prior notice to the Department of the intent to transfer and the new property owner provides appropriate documentation to substantiate ownership of the adjacent upland property and/or the structures authorized herein. Failure to transfer this Permit to a new owner may result in the revocation of the Permit and the removal of all structures authorized by this Permit at the expense of the Permittee.
21. Failure to comply with any of the terms or conditions of this Permit may result in enforcement action, which could include the revocation of this Permit, and subsequent restoration of the site to preconstruction conditions.

IN WITNESS WHEREOF, I, Laura M. Herr, the duly authorized representative of Collin P. O'Mara, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand this _____ day of _____, 2011.

By Laura M. Herr, the duly authorized
representative of the Secretary of the
Department of Natural Resources and
Environmental Control