



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES  
AND ENVIRONMENTAL CONTROL

OFFICE OF THE  
SECRETARY

89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

PHONE: (302) 739-9000  
FAX: (302) 739-6242

**Secretary's Order No. 2015-W-0006**

**Re: APPLICATION OF CITY OF NEW CASTLE, NEW CASTLE COUNTY FOR WATER QUALITY CERTIFICATION AND SUBAQUEOUS LANDS ACT AUTHORITY TO CONSTRUCT AND USE A PUBLIC COMMUNITY PIER AND DOCK IN THE DELAWARE RIVER EXTENDING CHANNELWARD FROM THE END OF DELAWARE STREET, NEW CASTLE, NEW CASTLE COUNTY**

**Date of Issuance: March 31, 2015**

**Effective Date: March 31, 2015**

Under the authority granted the Secretary of the Department of Natural Resources and Environmental Control (Department) pursuant to *7 Del. C. Chap. 60*, and the Subaqueous Lands Act (SLA), *7 Del. C. Chap. 72.*,<sup>1</sup> and other relevant authority, the following findings of fact, reasons and conclusions are entered as an Order of the Secretary.

**Background and Procedural History**

This Order considers the record as established by the Hearing Officer in the Hearing Officer's Report (Record) on the application submitted by the City of New Castle, New Castle County, a municipal corporation (Applicant) on January 17, 2014 (Application) and revised on September 19, 2014 (Amended Application). Applicant seeks a federal water quality certification pursuant to §401 of the Clean Water Act and a SLA permit and lease to use public subaqueous lands in the Delaware River at the northern end of Battery Park where Delaware Street ends in the City of New Castle, New Castle County. Applicant proposes to construct a new municipal

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<sup>1</sup> The application also is subject to the Department's SLA Regulations at *7 DE Admin. Code 7405*.

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pier and dock and remove remnants of a destroyed municipal pier at a location downstream (Project).

The Department received requests for a public hearing on the Application, and the Department held a public hearing on June 12, 2014 before the Department's presiding hearing officer, Robert P. Haynes. Following the public hearing, Applicant submitted an Amended Application on Sept. 19, 2014, which expanded the width of part of the pier. The WSLs determined that new public notice should be published on the Amended Application, and such notice occurred on November 5, 2014. The Department did not receive any public comment or request for a public hearing on this notice.

Mr. Haynes prepared the attached Hearing Officer's Report (Report), which recommends approval of the SLA permit and lease and the federal water quality certification. The Report's recommendation is consistent with the recommendation from the Department's experts in the Division of Water, Wetlands and Subaqueous Land Section (WSLS), who prepared a draft permit and lease attached to the Report along with WSLs' Technical Response Memorandum (TRM) provided to the hearing officer at the hearing officer's request after the hearing.

### **Findings of Fact**

The Secretary adopts the Report's Procedural History, Record, Findings of Fact and Reasons to the extent it is consistent with this Order. The Applicant requests authority to replace a community pier that was destroyed in 2012 during super storm Sandy. The Project will include construction work to remove the remnants of the old pier, which currently pose a navigation hazard to boaters on the Delaware River. The Project proposes to construct a new pier and dock slightly upstream from the old location. The new location was opposed by some public comments, but the new upstream location Applicant selected will improve the ability to

dock larger boats, such as the tall ship the Kalmar Nyckel, as explained in a letter from the Captain of the Kalmar Nyckel in support of the application.

Based on the information contained in the Application and the Amended Application, the Project will be used as part of Applicant's Battery Park, a waterfront public recreational area. Applicant's Riverfront Redevelopment Project seeks to improve tourism and public access to the Delaware River, and the Project is designed to improve water access to Applicant's historic district. The pier will be available for use by the public for fishing and general sightseeing, as well as to access up to four boats that may on occasion use the dock, possibly including the Kalmar Nyckel, the Three Fort Ferry, and the Goodwill Fire Company's fire and rescue boat, particularly for emergency use. The pier will have sewer pump out capability. The pier will also have public safety equipment and will have lighting as needed for proper illumination consistent with the historic area. The proposed length and width of the new pier in the Amended Application will allow greater public access to view the Delaware River and will allow access to the visiting Kalmar Nyckel or other similar vessels. The Amended Application indicates that the dock will be used for general public boating purposes for occasional use for up to four vessels at one time.

Numerous public comments were received in support and opposition to the Project. Some comments opposed the location, and most opposed the expenditure of money by the Applicant on the Project in building and maintaining it.

### **Conclusions and Reasons**

The WSLS, as detailed in the TRM, finds that the Project, subject to the terms in the proposed permit and lease, is an appropriate use to approve under the SLA, the SLA Regulations, and under §401 of the Clean Water Act's water quality certification. Accordingly, the Secretary

concur with the WSLs recommendation to issue the subaqueous permit, lease and federal water quality certification decision for the following reasons.

The Department issues this Order under *7 Del. C. Chap. 60* based upon the Amended Application. This Order considers the Record from the original Application, including the public hearing and public comments received, and the Amended Application. Even though no public hearing was requested on the Amended Application, public comments were received on the original Application and the Department carefully considered all the public comments. The public comments in opposition included the criticism of Applicant's decision to spend money on the Project for its construction and maintenance. However, pursuant to the SLA the Department has no authority to consider those factors when making a determination on an application. The Department's SLA review of the Record finds that it supports granting Applicant the SLA approval, subject to the reasonable conditions in the WSLs prepared permit. The Record supports the Project as providing a public recreational use and occasional use for docking a limited number of boats. The permit and lease, as drafted by WSLs' experts contain sufficient safeguards to ensure that the environment will be protected consistent with the provisions of the SLA.

In sum, the following conclusions are entered:

1. The Department has jurisdiction under its state and delegated federal authority pursuant to *7 Del. C. Section 6006* and *7 Del. C. Chap. 72* to make a determination on this Application for subaqueous lands permit and lease and water quality certification;
2. The Department provided adequate public notice of the Application and the public hearing, and held the public hearing in a manner required by the law and its regulations pursuant to *Sections 6003, 6004, and 6006 of Title 7*;

3. The Department considered all timely and relevant public comments in making this determination and this Order and attached Report identifies the Record to support its decision;

4. WSLs shall issue an approval for the water quality certification, and issue the permit and lease of public subaqueous lands for the Project based upon the draft permit and lease prepared by the Department's experts in WSLs attached hereto;

5. The conditions and terms in the permit and lease will protect the environment from the activity in the subaqueous lands, consistent with the intent of the SLA, and will allow the Applicant to provide public recreational use of the pier and dock; and

6. The Department shall publish this Order on its web site and provide such notice of it in a manner required by the law and the Regulations.



David S. Small  
Secretary

## HEARING OFFICER'S REPORT

TO: The Honorable David S. Small  
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 CITY OF NEW CASTLE FOR PERMISSION UNDER  
SUBAQUEOUS LANDS ACT AND FOR A WATER QUALITY  
CERTIFICATION TO BUILD AND USE A COMMUNITY PIER AND DOCK IN  
THE CITY OF NEW CASTLE, NEW CASTLE COUNTY**

DATE: February 25, 2015

### I. PROCEDURAL HISTORY

On January 17, 2014, the City of New Castle, New Castle County (Applicant) submitted to the Department of Natural Resources and Environmental Control's (Department) Division of Water, Wetlands and Subaqueous Lands Section (WSLS) an application for permission<sup>1</sup> for construction and use of a public municipal pier and dock (Project). The pier and dock would be built in public subaqueous lands in the Delaware River, extending from the end of Delaware Street at the northern part of Applicant's Battery Park. The Project would also remove the remnants of the old pier that had been destroyed. The Project would be part of Applicant's Riverfront Redevelopment Project.

On February 26, 2014, WSLS had published public notice of the application, which provided a twenty day period to submit public comments, including requests for a public hearing. WSLS received numerous comments and requests for a public hearing on or before the April 8, 2014 deadline.

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<sup>1</sup> Approval by a lease issued under the *Subaqueous Lands Act*, 7 Del. C. Chap. 72 (Act), and Department's *Regulations Governing the Subaqueous Lands*. 7 DE Admin. Code 7504 (SLA Regulation)

On March 19, 2014, WSLs published a new public notice, which deleted any request to operate a marina as part of the Project, and this twenty day notice period for public comments ended on March 18, 2014. WSLs again received numerous public comments and requests for a public hearing.

On May 21, 2014, WSLs published a public notice of the public hearing to be held June 12, 2014, at the New Castle Elementary School, 903 Delaware Street in New Castle. I presided over the public hearing, which was attended by approximately twenty persons in addition to representatives of the Department and the Applicant.

The Department received a July 29, 2014, letter from the United States Department of Commerce's National Marine Fisheries Service to the United States Corps of Engineers that commented on the Project and imposed conditions that in water construction should not occur March 1 through June 30 and that pile driving sound noise should be reduced through soft strike start up. These conditions were imposed based upon the presence in the Delaware River of sturgeon species protected by the Endangered Species Act.

The Department received an August 19, 2014, letter from the Delaware Historical and Cultural Affairs Office to the Applicant's consultant, which noted the presence of the Project in the New Castle Historic District and National Historic Landmark and commented on the lighting of the pier should be consistent with the current lighting fixtures and should be minimum amount needed and that the color of the wave attenuators should be neutral.

Following the hearing, the Applicant's consultant provided written response to the public comments that the Department received June 19, 2014. In a September 19, 2014, cover letter, the consultant also submitted a revision to widen the first 84 feet of the pier to 12 feet and to eliminate the landing at the security gate. The revision would not change the pilings, but

expanded the use of subaqueous lands. WSLs determined that the revision should be the subject of a new public notice, which occurred on November 5, 2014. The twenty day public comment period ended on November 25, 2014, with the Department did not receive any public comments or requests for a hearing. / 7, not clear

On December 10, 2014, the Department received additional information requested by WSLs.

I requested technical assistance from WSLs, which provided me the attached Technical Response Memorandum (TRM) prepared by WSLs's expert Jim Chaconas dated January 12, 2015, along with a draft of the lease consistent with WSLs' recommendation. WSLs recommends approval of the SLA authority and federal Section 401 water quality certification and that a lease of 3,043 square feet be granted for a term of twenty years.

## II. SUMMARY OF THE RECORD<sup>2</sup> AND FINDINGS OF FACT

The record contains the following: 1) the verbatim transcript of the public hearing; 2) the documents introduced as exhibits at the hearing, including all written public comments received listed below as Exhibits 1-5; 3) the revised application submitted on September 19, 2014, and 4) this Report, including the referenced documents cited herein and WSLs' TRM attached hereto.

At the public hearing, Mr. Chaconas, an environmental scientist for WSLs, provided for the record<sup>3</sup> the following documents that were marked as exhibits: the January 2014 application (DNREC Ex. 1); the public notices of the application (DNREC Ex. 2); the public notice of the

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<sup>2</sup> The record reflects the information considered relevant for this Report and a final decision, including information developed during the public hearing process and the Department's post-hearing review of information in its files, including information gathered to support the final decision.

<sup>3</sup>The Department has no obligation to develop the record at the hearing, but provides documents to assist the public in making comments

public hearing (DNREC Ex. 3); a copy of the SLA and SLA regulation (DNREC Ex. 4); and the public comments received (DNREC Ex. 5).

The Project seeks to replace the old pier at Applicant's Battery Park, a public municipal park along the Delaware River. The old pier, known as Prisoner's Bridge, was built in the 1940s and predates the SLA. This pier was destroyed during Super Storm Sandy in October 2012, but its remnants remain, namely, twelve sets of pilings, two mooring dolphins and various berthing pilings. The Project proposes to remove the remnants as they represent a public safety hazard. Applicant determined that using the same location for a new pier was not suitable for expanding the use of the pier to allow vessels to dock because of the river currents and obstacles. Applicant, as a public body, held public meetings about replacing the old pier and determined to rebuild the pier at a new location slightly upriver from the old location. The new location would be at the northern boundary of Battery Park at the end of Delaware Street where there is an existing plaza.

The Project's pier would extend from the shoreline 160' channelward from the southern end of the plaza towards an existing concrete structure known as icebreaker number 3, which would be 148' from the dock. The Project would install at each end of the icebreaker 3' by 100' wave attenuators, which would be anchored to the bottom by concrete blocks. Initially Applicant proposed constructing a 6' wide by 160' long wooden plank pier with safety railing, lighting, water, electric and sewer lines. The pier would have a 12' by 16' platform with security gate approximately 84' from the shoreline, and extend another 76' to a 10' by 100' dock, which at one end would have 5' by 5' landing to access a 5' x 15' gangway/ramp leading to a 5' by 15' floating dock. The Project would have four mooring dolphins, two free standing pilings. Fifty

12 inch diameter piles would support the pier and dock, and these would be installed using a vibratory hammer and impact hammer.

The Project's docking facilities after the revision that deleted the proposed marina would be used occasionally for up to four vessels, such as the tall ship Kalmar Nyckel, the three foot ferry, and the Goodwill Fire Company's rescue boat. The Kalmar Nyckel captain provided a letter of support for the application and noted the problems with the old location. The low mean water depth channelward of the dock is 14'.

As a result of Applicant's last revision and supporting information the Department received September 2014, the pier's first 84' from the shoreline was widened to 12' and the remaining 76' long by 6' wide pier would serve the dock facilities, and provide storage for public safety equipment and a sewer pump out facility. The total area of public subaqueous lands to be used is 3,043 square feet under a twenty year lease term.

At the hearing, Applicant's consultant, David Gosse of Duffield Associates, made a brief presentation on the Project's design and purpose. He explained how the design originally had day slips for boats, but this was removed in response to public comments. He noted that the Project had been the subject of Applicant's March town meeting.

The first person to speak was Edwin Betz, who expressed concern with the lighting, the possible encroachment on private lands, and the cost to maintain the facility.

Alice Jarvis spoke and indicated her doubt that any vessel would use the dock. She also expressed comments on a proposed dike and that there should be a comprehensive plan.

David Bird spoke as a boater and a member of the sailing club and he expressed support for limited docking by the Kalmar Nyckel and similar vessels so long as the dock could not be used by small boats, such as jet skis.

Dorothy Fiske spoke and wanted the old pier's location to be used for a new pier and she expressed concern with how the City would pay for maintenance. She also commented that the priority should be on protecting the City from flooding and not on building a pier. She also asked about the designation of a contractor and Mr. Chaconas informed her that the designation still can be made as part of the approval process.

William Thatcher spoke and indicated his opposition to the Project based upon concerns with people drowning.

Sandy Denton spoke in support of the Project and would prefer more boating opportunities, including a marina. She commented on a comprehensive plan needed the support of private landowners along the Strand.

Bill Boyle spoke in support of the Project as a way to bring people to New Castle and he supported the new location over the old location, which he said would have to be three times as long and hence more expensive.

Rod Gillespie spoke and questioned the reliance on a 2013 hydrographic survey's depth readings and that changes may have caused there to be insufficient water depth for the Kalmar Nyckel. He questioned whether there was sufficient parking space with the existing 18 spaces for the 45 persons that the Kalmar Nyckel can carry and the 95 people it may hold when docked. He also questioned the location of a sewage pumping station on land. He also commented that the Project should be regulated as a marina similar to the regulation of headboats and that there should be toilets provided. Finally, he wanted to see a cost benefit analysis done to determine if there is economic justification for the Project.

Roger Clark spoke and commented that the dock would not be used most of the time based upon his review of the Kalmar Nyckel sailing schedule that in 2014 had 135 sailing days and that the dock without a boat would be an eyesore.

Vinny Beale provided comments on a dock would face storms and debris and that the location is not a good place for the pier and dock surviving storms. He also wanted to see a cost benefit analysis done before the Project was built. He claimed that there is no benefit from the Project.

Michael Heyman's statement was read and he indicated concern with the minimum \$785,000 cost of the Project and the ongoing maintenance cost. He also indicated the dock would be used by noisy boats<sup>✓</sup> such as cigarette boats.

Gail Seitz had her letter read into the record and she supported the Project based upon the long time maritime history of New Castle and the ability to dock the Kalmar Nyckel and other tall ships.

Mr. Thatcher spoke again about the debris that the River brings and how it would harm any boats using the dock and that to his knowledge as a long-time member of the Fire Company the fire boat would not use the dock.

Jeff Luoma spoke and supported building a dike over building the pier, which he said would likely be destroyed by a storm.

Mrs. Denton spoke again and mentioned how the old pier had lights on it, and that many use the Delaware River for boating enjoyment.

Mrs. Jarvis spoke again and wondered about the accumulation of trash in the water as a result of the pier and Mr. Goose addressed this concern and noted that the height of the pier above the water may change.

Larry Kopenhaver spoke and wanted to read his written comment, which was opposed to the Project's location, design and that there was no cost benefit justification for it.

Mr. Gosse spoke to respond to the 21 points he counted in the public comments.

Mr. Chaconas prepared the attached memorandum that sets forth WSL's recommendation to approve the revised Project.

I consider the record, as reviewed above, sufficient to support a final decision that the Department should approve the SLA authority to construct and use the Project and the water quality certification.

### **III. DISCUSSION OF FINDINGS OF FACT AND REASONS**

Applicant proposed the Project to replace the pier destroyed in 2012 and as part of a riverfront redevelopment. Based upon the record, I find that the Project is well-supported and recommend approval. First, the Project will remove the remnants of the destroyed pier, which poses a navigational hazard to boaters. Second, the construction of a new pier will be for public recreational uses, such as fishing and sightseeing from the pier as an extension of Battery Park. Third, the Project's occasional use docking by up to four vessels also is consistent with a recognized use of public subaqueous lands. Fourth, the construction of wave attenuation will provide a public benefit by reducing waves and thereby protect the shoreline from erosion. Thus, based on these reasons and applying the Department's SLA Regulation criteria, and after considering the public comments, I recommend approval.

The Department's requirements for permits and leases are set forth in the SLA Regulation. The Project satisfies the public purpose and environmental safeguard in Section 4 of the SLA Regulation. The public comments raised no reason to deny the Project, but instead largely were opposed to the Project based upon Applicant's decision to rebuild the pier and its

expenditure of public funds for the construction and maintenance. The public comments that questioned the lighting raised valid environmental concerns and I find that the lighting will comply with the historical district and hence should be approved if consistent with the local regulation of the historic district.

The questions about the use of public funds both to replace the pier and to maintain it, including to replace it should it be destroyed in a storm, are not questions that are within the Department's authority under the SLA. A Department SLA review of a proposed use of subaqueous lands only determines if the use is consistent with allowed uses under the SLA and the environmental impact of the proposed use. The Department does not review or otherwise second guess the decision to build in public subaqueous lands or the source of funds used to build in public subaqueous lands. The Department considers the application by a municipality similar to an application from a homeowner who seeks to build a pier and dock for a personal boat and the Department does not require justification for the reasons to build it so long as the construction otherwise meets the SLA and SLA Regulation. Thus, Applicant's decision to build a pier was made by a public body, and, as such, entailed more public debate than otherwise would occur for private piers and docks, but that does not allow the Department to expand its limited SLA jurisdiction to second guess the Applicant's decision as many of the public comments requested.

The record discloses that the Project was the subject of vigorous debate before City Council in its meetings on the Project. The Department does not require a cost benefit analysis or other justification for the Project so long as it satisfies the SLA and the Department's SLA Regulation. I find that the Project does satisfy the SLA and the Department's SLA Regulation and recommend that the Project be approved consistent with WSL's recommendation.

The Department evaluates plans based upon the environmental impact on the public subaqueous lands. The Department's experts reviewed the plans and conclude that the Project should be approved as consistent with the SLA and the Regulation subject to reasonable conditions in the draft permit/lease WSLs prepared. The conditions reflect the protection of the endangered species that was identified. The conditions also reflect the federal water quality certification measures to be taken to protect the quality during construction. The experts recommend conditions on the approval and will monitor the construction and use to determine that Applicant complies with the conditions. The Department will supervise the construction and other monitor compliance with the permit/lease to ensure that the Applicant follows all Department mandated environmental safeguards.

#### **IV. CONCLUSION**

I recommend the following conclusions be entered:

1. The Department has jurisdiction under its state and delegated federal authority pursuant to *7 Del. C. Section 6006* and *7 Del. C. Chap. 72* to make a determination on this Application for subaqueous lands permit and lease and water quality certification;
2. The Department provided adequate public notice of the Application and the public hearing, and held the public hearing in a manner required by the law and its regulations pursuant to Sections 6003, 6004, and 6006 of Title 7;
3. The Department considered all timely and relevant public comments in making this determination and this Order and attached Report identifies the Record to support its decision;

4. WSLs shall issue an approval for the water quality certification, and issue the permit and lease of public subaqueous lands for the Project based upon the draft permit and lease prepared by the Department's experts in WSLs;

5. The conditions and terms in the permit and lease will protect the environment from the activity in the subaqueous lands, consistent with the intent of the SLA, and will allow the Applicant to provide public recreational use in the pier and dock; and

6. The Department shall publish this Order on its web site and provide such notice of it in a manner required by the law and the Department's regulations.

  
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Robert P. Haynes, Esquire  
Senior Hearing Officer



WETLANDS & SUBAQUEOUS  
LANDS SECTION

STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES &  
ENVIRONMENTAL CONTROL  
DIVISION OF WATER  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

TELEPHONE (302) 739-9943  
FACSIMILE (302) 739-6304

### Technical Response Memorandum

To: Robert Haynes, Hearing Officer

Through: Virgil Holmes

J. Scott Figurski

From: Jim Chaconas

Date: January 12, 2015

Subject: City of New Castle Subaqueous Lands Permit Application to construct a community pier and wave attenuators in the Delaware River at the end of Delaware Street, City of New Castle, New Castle County, Delaware

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This Technical Response Memorandum (TRM) presents the Wetlands and Subaqueous Lands Section's (WSLS) findings regarding the above-referenced permit application. The applicant, the City of New Castle, initially submitted a Subaqueous Lands Permit application proposing to remove the remnants of the pier at Battery Park and construct a 6 foot by 160 foot pier, a 12 foot by 16 foot platform, a 10 foot by 100 foot dock, a 175 square foot ramp and floating dock, 4 mooring dolphins, 2 free standing pilings and two 3 foot by 100 foot wave attenuators in the Delaware River at the end of Delaware Street in the City of New Castle. The application stated that the structure would service commercial and historic vessels; the Kalmar Nyckel tall ship, the Delaware River Port Authority's Fort Delaware/Salem Ferry, and the Goodwill Fire Department's Rescue boat. The public notice for the project received numerous comments, both for and against the project, and requests for a public hearing. Consequently, a public hearing was held at the New Castle Elementary School auditorium in New Castle on June 12, 2014.

At the hearing numerous comments and concerns were expressed about the proposed project. A summary listing the topics of concern and responses addressing the concerns prepared by David Gosse, technical respondent and permit support specialist for the project, Duffield Associates, Inc., 5400 Limestone Rd., Wilmington, DE 19803 is provided as follows starting with the qualifying paragraph.

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*The prisoner's bridge was constructed in World War II. The structure was replaced by a new structure in the 1990s by Hardcore Composites, so preservation of the "original" structure is already voided.*

*Cost/Benefit report: a draft cost benefit report was delivered to the City in second quarter 2014. Duffield Associates is working with the City to finalize the report.*

*Safety Concerns: The design of this structure was developed with the intention to comply with current City and New Castle County building code, which addresses safety and access concerns. The final design will provide more details regarding safety and access. Options such as a locking gate that restricts access when the dock is not in use are being considered.*

*Dredging: respondents commented on both dredging for the prior structure as an alternative as well as the environmental and cost impacts of dredging. As part of the citing procedure, Duffield Associates wanted to minimize dredging as it has greater environmental impacts than extending a structure into deeper water. Further, maintenance costs of not dredging are considerably lower.*

*Sewage line: a sewage line is mentioned in the DNREC application. The sewage line will run from the dock to the foot of Delaware Street only, and will not be connected to the municipal sewer line. The sewer line is intended to provide a contingency sewer pump out for the Kalmar Nyckel should the ship be docked for an extended period at New Castle; if needed, a sewage truck could connect to the line terminal at the foot of Delaware street and pump out the Kalmar Nyckel. Note that the Kalmar Nyckel has its own sewage holding tank and would not need the sewer line for day visits. The sewer line would be secured when not in use. The sewer line is not intended and would not be provided to recreational/private vessels. Recreational or private vessels will not be allowed to use the pier and dock.*

*Kalmar Nyckel proposed time in dock: The Kalmar Nyckel's endorsement does not guarantee its visits to the facility. A respondent commented that the Kalmar Nyckel spends a significant amount of time in Lewes. The Lewes trip is used by the Kalmar Nyckel Foundation as both a training and tourism platform.*

*Dock design: respondents questioned the validity of the dock design. The dock and pier were designed by Duffield Associates' Marine Engineer, and are intended to be appropriate for the projected use. The dock and pier are not intended for heavy industrial commercial use, such as for docking oil tankers, PanaMax freighters, or automobile carriers.*

*Floating detritus: respondents were concerned with floating detritus. While the shadowing effect of the structure is considered for the DNREC permit, the height above water is not regulated, and could be changed should the City determine it appropriate in the final design. Currently*



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DIVISION OF WATER  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS  
LANDS SECTION

TELEPHONE (302) 739-9943  
FACSIMILE (302) 739-6304

Subaqueous Lands Lease: SL-021/14  
Associated Authorization: WQ-023/14  
Date of Issuance:  
Construction Expiration Date:  
Amended Date:  
Tax Parcel No.: 2101800012

**SUBAQUEOUS LANDS LEASE**

**GRANTED TO THE CITY OF NEW CASTLE, TO REMOVE REMNANTS OF THE EXISTING PIER AT BATTERY PARK AND TO CONSTRUCT A 12 FOOT WIDE BY 84 FOOT LONG SECTION OF PIER CONNECTED TO A 6 FOOT WIDE BY 76 FOOT LONG SECTION OF PIER, A 10 FOOT WIDE BY 100 FOOT LONG DOCK, A 5 FOOT BY 5 FOOT LANDING, A 175 SQUARE FOOT GANGWAY AND FLOATING DOCK, 4 MOORING DOLPHINS, 2 FREE STANDING PILINGS, AND TWO 3 FOOT BY 100 FOOT WAVE ATTENUATORS IN THE DELAWARE RIVER AT THE END OF DELAWARE STREET, CITY OF NEW CASTLE, NEW CASTLE COUNTY, DELAWARE**

City of New Castle  
c/o William J. Barthel  
220 Delaware Street  
New Castle, DE 19720

Pursuant to the provisions of 7 Del. C., §7205, and the Department's Regulations Governing the Use of Subaqueous Lands, permission is hereby granted on this \_\_\_\_\_ day of \_\_\_\_\_ A.D. 2015, to construct and maintain the above-referenced project in accordance with the approved plans for this Lease (4 Sheets) as approved on January 12, 2015 and the application dated January 8, 2014, and received by this Division on January 17, 2014 with additional information received on June 19, 2014, September 19, 2014 and December 10, 2014.

WHEREAS, the State of Delaware is the owner of ungranted subaqueous lands lying beneath the waters of the Delaware River; and

WHEREAS, the City of New Castle, owner of certain adjoining lands to the Delaware River, has applied for permission to remove the remnants of an existing pier and construct a public pier and dock; and

*Delaware's good nature depends on you!*

WHEREAS, pursuant to the provisions of 7 Del. C., §7203, 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 herein set forth.

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

This Lease shall be continued for a period of twenty (20) years or so long as the conditions attached to the Lease are adhered to, whichever is the shorter in time. Upon the expiration of the twenty-year term, this Lease shall expire and become null and void, unless prior thereto the lessee shall have applied for and received a renewal of this lease. A renewal may be denied if the State determines that the Lease is no longer in the public interest.

THIS Lease is issued subject to the following conditions:

#### **SPECIAL CONDITIONS**

- 1. This Lease shall not be considered valid until it has been duly recorded in the office for the Recorder of Deeds in and for the appropriate County and a copy of the recorded Lease is returned to, and has been received by, the Department.**
2. Erosion and sediment control measures shall be implemented in accordance with the specifications and criteria in the current Delaware Erosion and Sediment Control Handbook so as to minimize entry and dispersal of sediment and other contaminants in surface waters.
3. No portion of the decking on any pier or dock authorized by this Lease shall exceed the width dimensions for that structure identified on Page One of this Lease.
4. The dock and pier, authorized by this Lease shall not be used for heavy industrial commercial use, such as for docking oil tankers, PanaMax freighters, or automobile carriers.
5. The dock and pier, authorized by this Lease shall not be used as a marina as defined in the Department's Marina Regulations.
6. A vibratory hammer shall be used for the installation of pilings and other structures to reduce the level of underwater noise affecting the Atlantic sturgeon and shortnosed sturgeon that may be in the area during times of construction.

7. Construction activities shall be conducted in a manner consistent with the time-of-year-restriction identified by the DNREC, Division of Fish and Wildlife Fisheries Section and the NOAA National Marine Fisheries Service, restricting such activity from occurring March 15 to June 30 of any year within the authorized construction window.
8. Construction activities shall be conducted in a manner that will prevent impacts to the cultural and historic resources located adjacent to the project site.
9. The entire structure authorized by this Lease totals 3,043 square feet and is located channel ward of the mean low water line located at the base of the landing at the end of Delaware Street.

#### **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 CENAP-OP-R-2014-00089-64 (IP).
2. This Lease is granted for the purpose of constructing a pier and dock to provide safe waterfront access for commercial and public vessels serving the City of New Castle as well as providing public access for walking, fishing, sightseeing, and wildlife observation. Any other use without prior written approval shall constitute reason for this Lease being revoked.
3. The lessee 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 Lease conditions, the final stamped and approved plans, and with the information provided in the lease application.
5. A copy of this Lease 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 lessee and contractor are responsible to ensure that the workers executing the activities authorized by this Lease have full knowledge of, and abide by, the terms and conditions of this Lease.
7. The lessee 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 Lease 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 Lease does not imply approval of any other part, phase, or portion of any overall project the lessee may be contemplating.
10. This Lease 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 lessee 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 Lease 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 State of Delaware's Surface Water Quality Standards, as amended June 11, 2011.
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 lessee and contractor shall employ measures during construction to prevent spills of fuels, lubricants or other hazardous substances. In the event of a spill, the lessee 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 lessee 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 Lease. The lessee 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 lessee shall notify the Wetlands and Subaqueous Lands Section prior to the commencement of the work authorized by this Lease.
18. The lessee 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 lessee and/or upland property owner within thirty (30) days of receipt of written notice of revocation and demand for removal.
20. This Lease is personal and may not be transferred without the prior written consent of the Department. Prior to the transfer of the adjacent upland property, the lessee shall obtain the written consent of the Department to transfer the Lease to the new upland property owner. Failure to obtain such written consent may result in the revocation of this Lease and the removal of all structures authorized by this Lease at the expense of the lessee.
21. Failure to comply with any of the terms or conditions of this Lease may result in enforcement action, which could include the revocation of this Lease, and subsequent restoration of the site to preconstruction conditions.

IN WITNESS WHEREOF, I, William J. Barthel representing the City of New Castle, have caused this instrument to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

By: \_\_\_\_\_  
William J. Barthel for the City of New Castle

(seal)  
SWORN and subscribed before me on  
this \_\_\_\_\_ day of \_\_\_\_\_,  
2015.

\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, I, David S. Small, Secretary, Department of Natural Resources and Environmental Control, have hereunto set my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
By: David S. Small  
Secretary of the Department of  
Natural Resources and  
Environmental Control