



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
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Office of the
Secretary

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Secretary's Order No.: 2019-W-0040

RE: Permit Application of Sunrise Ventures, LLC, to construct a new 20 slip community marina, to install shoreline stabilization, and to conduct maintenance dredging in the Lewes and Rehoboth Canal, located south of the intersection of Kaitlyn Drive and Oyster House Road, Rehoboth Beach, Sussex County, Delaware, thus necessitating Applicant to obtain the following: (1) a Marina Permit; and (2) a Subaqueous Lands Permit and Water Quality Certification.

Date of Issuance: October 17, 2019

Effective Date: October 17, 2019

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 *Del.C.* §§6003, 6004(b), 6006(4), Delaware's *Subaqueous Lands Act* (7 *Del.C.* Chapter 72), and all other relevant statutory authority, the Department of Natural Resources and Environmental Control ("Department," "DNREC") issues this Order, approving (1) a Marina permit; and (2) a Subaqueous Lands Permit and Water Quality Certification to allow Sunrise Ventures, LLC ("Applicant"), to construct a new 20 slip community marina, install shoreline stabilization, and conduct maintenance dredging in the Lewes and Rehoboth Canal, located south of the intersection of Kaitlyn Drive and Oyster House Road, Rehoboth Beach, Sussex County, Delaware ("proposed project").

The Applicant's proposed project is subject to the requirements of Delaware's *Subaqueous Lands Act* (7 Del.C. Chapter 72), the Department's *Marina Regulations* (7 DE Admin. Code 7501), the *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), the *Regulations Governing the Control of Water Pollution* (7 DE Admin. Code 7201), Section 401 of the federal *Clean Water Act*, and 7 Del.C. Chapter 60.

It should be noted that the design of this proposed project has been modified significantly from the application originally received by the Department in this matter. The original application, received on April 10, 2018 by the Department's Division of Water, Wetlands and Subaqueous Lands Section ("WSLS"), was submitted by Environmental Resources, Inc., on behalf of Oyster House Village DE, LLC. The proposed project was then advertised for a 20-day public notice period on May 30, 2018. During that time, the WSLS received several concerned calls from the neighboring homeowners and communities. An informal meeting on the proposed project was held on June 10, 2018 with the Bay Harbor Homeowners Association, the Applicant's consultant, and Tyler Brown of the Department's WSLS.

As a result of the Department's initial review of the Applicant's original application, and based on agency consultation, several modifications were recommended and made to the proposed marina. These modifications were made by the Applicant in order to (1) address concerns about this proposed project that were voiced at the informal meeting noted above; and (2) comply with all statutory and regulatory requirements as set forth herein.

Ultimately, the revisions to this proposed project by the Applicant resulted in a more reduced impact to existing subaqueous lands than the originally proposed project. It should be noted that the modifications were made by the Applicant *prior* to the public hearing held in this matter on May 28, 2019, and were thus able to be fully vetted to the public at the time of the hearing. The modifications made to the Applicant's originally proposed project, the concerns raised in the comments received from the public, and the Department's responses to the same, will all be addressed in greater detail below.

Background and Findings of Fact

As noted above, the Department's WSLS received an application from Environmental Resources, Inc., submitted on behalf of the Applicant in this matter, on April 10, 2018. Subsequent to that original application being placed on public notice by the Department, several modifications were recommended and made by the Applicant to the proposed marina project.

As required by the *Regulations Governing the Use of Subaqueous Lands*, the Applicant's name as stated on the original application was changed from Oyster House Village DE, LLC, to the current property owner, Sunrise Ventures, LLC. Although Oyster House Village DE, LLC is the contract purchaser and equitable owner, the final transfer of the property has not yet occurred. Upon issuance of this Order, the WSLS draft permits will be updated to reflect the new property owner (but only after proof of final transfer of property ownership has been provided to the Department by the Applicant).

In addition to the Applicant's name change, the following modifications were also made to the proposed project:

- A reduction in the length of the dock by 48 linear feet;
- A reduction in the length of riprap revetment by 135 linear feet;
- The relocation of the existing DNREC Shoreline and Waterway Management dredge operations compound (to allow continued public use of the unimproved boat ramp);
- An additional five (5) cubic yards of riprap associated with two stormwater outfall aprons;
- A reassessment which calculated approximately 37 cubic yards less material to be dredged; and
- A new disposal location based on the DNREC Groundwater Protection Branch review (to eliminate concerns associated with the brownfield site).

After receiving the final application modifications on March 26, 2019, the Department's public hearing notice was published on April 17, 2019. A total of four (4) letters of objection were received by the Department concerning this proposed project. Concerns raised included the proposed marina community being constructed on a brownfield site, the perceived "lack of public transparency" during the time period when the Department's Site Investigation and Restoration Section conducted its review of this matter, the staging of dredge operations by the Department's Shoreline and Waterway Management, and the location of the marina being sited in a constricted section of the canal.

Additional concerns voiced by the public in this matter included potential impacts to water quality, the increase of noise pollution, the manner in which this marina (if permitted) would be operated, and the proposed location of the marina being situated on lands owned by the United States of America.

The final application submitted by Sunrise Ventures, LLC proposes the construction of a new 20 slip minor marina by installing a 6 foot wide by 13 foot long section of access pier, a 6 foot wide by 4 foot long section of access pier, a 6 foot wide by 434 foot long section of dock with a 38 foot long section constructed over uplands (for a total dock length of 472 linear feet), and a 6 foot wide by 7 foot long kayak launch ladder. The Applicant also proposes to stabilize the shoreline in three separate areas by installing 190 linear feet of riprap revetment, 145 linear feet of riprap revetment, and to repair by replacement 76 linear feet of bulkhead. Furthermore, the Applicant proposes to construct two (2) stormwater outfall aprons protruding from the riprap revetment, composed of a total of five (5) cubic yards of riprap, and to mechanically maintenance dredge approximately 263 cubic yards to a depth ranging from -2.0 feet to -3.5 feet NAVD88 in the Lewes and Rehoboth Canal, located south of the intersection of Kaitlyn Drive and Oyster House Road, Rehoboth Beach, Sussex County, Delaware. The dredged material would be disposed of via water-tight dump trucks to a previously approved borrow pit disposal area located northeast of the intersection of Irons Lane and Old Mill Road at Tax Parcel #134-7.00-187.00, in Dagsboro, Delaware (“Application”).

The Department held its public hearing concerning this matter on May 28, 2019, which was attended by the Department's WSLs staff, representatives of the Applicant, and individuals from the public. Proper notice of the hearing was provided as required by law.

Subsequent to the aforementioned public hearing noted above, at the request of Hearing Officer Lisa A. Vest, the technical experts in the Department's Division of Water prepared a Technical Response Memorandum ("TRM") to (1) specifically address concerns voiced by both the Department and members of the public about this proposed marina project; (2) provide a formal regulatory review of the Applicant's project; and (3) offer the Division of Water's conclusions and recommendations with regard to this pending Application for the benefit of the hearing record generated in this matter.

Subsequent to the Department's TRM having been received for inclusion into the hearing record, Hearing Officer Vest prepared her Hearing Officer's Report ("Report"), dated September 30, 2019, which expressly incorporated said TRM therein. Ms. Vest's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report, and provided findings of fact, reasons, and conclusions that recommend the Department approve this permit Application, subject to the conditions set forth in the following two draft approval documents: (1) Subaqueous Lands Permit SP-145/1 and Water Quality Certification WQ-145/18; and (2) Marina Permit MP-145/18, for the Applicant's construction and installation of the proposed project, as set forth in the Application referenced above.

The Report also addressed the public comments received in this matter and concluded that the same did not warrant the Department's denying this pending Application, or delaying the permit decision to receive any further additional information.

Reasons and Conclusions

This Application is for the construction and operation of a minor marina project located south of the intersection of Kaitlyn Drive and Oyster House Road, Rehoboth Beach, Sussex County, Delaware. Specifically, the Applicant's project proposes the construction and installation of a new 20 slip community marina, to install shoreline stabilization, and to conduct maintenance dredging in the Lewes and Rehoboth Canal, as set forth above.

Preliminarily, I find that the proposed project will require the Applicant to obtain both (1) a Marina Permit; and (2) a Subaqueous Lands Permit and Water Quality Certification from the Department's WSLs. I further find that the Applicant's proposed project is subject to the federal and state statutory and regulatory requirements previously referenced herein.

In reviewing the applicable statutes and regulations, as well as weighing public benefits of this project against potential detriments, the Department's experts in the Division of Water have concluded that the construction of the proposed docking facility, maintenance dredging, shoreline stabilization, and stormwater outfalls, as described in the Application of Sunrise Ventures, LLC, complies with the applicable Regulations administered by the WSLs.

The Applicant has applied for one structure to serve the entire community, which the WSLs views positively, since it is a reduction of an overall environmental impact in comparison to the construction of multiple structures for single-family homes. Public use impacts have been minimized in the proposed project, since the Applicant has requested 20 slips for a community composed of 30 single-family homes. Furthermore, no portion of the proposed docking facility will encroach within the 10 foot wide buffer of the 55 foot wide federal navigational channel.

The Department notes that minor maintenance dredging along the shoreline bank has been requested in association with a canal once dredged by the United States Army Corps of Engineers (“USACE”). Adequate water depths should be sustained without the need for frequent dredging events. Additionally, the Applicant’s proposed shoreline stabilization activities are an improvement to the current deteriorated site conditions.

The Lewes and Rehoboth Canal is a federally maintained navigational channel, predominantly used as a travel lane from the Delaware Bay to the Inland Bays, so potential water use conflicts are deemed minimal by the Department. As explained by Department staff at the time of the public hearing held on May 28, 2019, although the marina project is located on lands owned by the United States of America, permits are routinely made available through USACE for adjoining property owners to have recreational water access.

As noted previously, the Applicant developed alternatives to the originally proposed project in order to minimize environmental impacts. Several modifications were made to the initial application, to include (1) a reduction in the length of the dock by 48 linear feet; (2) a reduction in the length of riprap revetment by 135 linear feet; (3) a revision of the original proposed relocation of the DNREC dredging operation compound to allow continued public use of the unimproved boat ramp; and (4) the relocation of the dredge disposal location in order to eliminate concerns associated with the brownfield site.

The proposed marina has minimized potential sources of contamination by providing a sewage pumpout system, by not providing fueling facilities, and by not allowing major vessel maintenance work to be done on the grounds of the marina. Additionally, the submitted Operations and Maintenance (“O&M”) Plan for the marina has rules and regulations for boat tenants which contain best management practices and tips, including (but certainly not limited to) ways in which to control oil in the bilge, management of vessel sewage disposal, trash, and recycling. Also included within the O&M Plan are emergency procedures and safety precautions to be implemented during hurricanes and severe weather events.

In order to ensure that the concerns voiced by members of the public are addressed, the Department's WSLs has included numerous special conditions in the draft Marina permit, including a requirement that the unimproved boat ramp remains unobstructed for public use. Additionally, due to simultaneous State and federal permitting processes, the Applicant will be required to secure and submit to the Department an executed Real Estate license agreement from the Real Estate Division of the Baltimore District of USACE, formally authorizing the construction and operation of the proposed marina.

The Record reflects that concerns were voiced by members of the public over vessel traffic and public safety associated with this proposed project. In order to address the above referenced concerns, the following special condition has also been included in the draft Marina Permit:

Any future marina facility expansion or alteration to the approved plans herein shall require a separate authorization from the Wetlands and Subaqueous Lands Section. This includes minor modifications, such as boat/personal watercraft lifts, floating structures, and any other variation that would alter the footprint of the approved marina.

In conclusion, the State of Delaware is charged with upholding the Public Trust Doctrine, which has been used historically in protecting the public's rights to fishing, commerce, navigation, recreation and even preservation as an appropriate public use. The Department recognizes that there are concerns associated with this project, but has balanced those concerns.

The Record developed in this matter indicates that the Department's experts have considered all statutes and regulations that govern projects such as the Applicant's proposed project, and have recommended issuance of all permits necessary for completion of the same to the Applicant in this matter. I find and conclude that the Applicant has adequately demonstrated its compliance with all requirements of the statutes and regulations, as noted herein, and that the Record supports approval of the Application submitted by Sunrise Ventures, LLC. Accordingly, this Order approves all permits required for this proposed marina project, consistent with the Record developed in this matter, and directs that the same be issued by the Department in the customary form, and with appropriate conditions.

Further, the Department concludes and directs the following:

1. The Department has jurisdiction under *7 Del. C. §§6003, 6004, 6006(4), 7 Del. C. Chapter 72*, and all other relevant statutory authority, to make a final determination on the Applicant's permit application, after holding a public hearing and considering the public comments and all information contained in the Record generated in this matter;
2. The Department provided proper public notices of the permit application of Sunrise Ventures, LLC, and of the public hearing held on May 28, 2019, and held said hearing in a manner required by the law and regulations;
3. The Department considered all timely and relevant public comments in the Record, as established in the Report, prior to issuing this Order as its final decision;

4. The Department has carefully considered the factors required to be weighed in issuing all permits and leases required by the Applicant's proposed marina project, and finds that the Record supports approval of the same, based upon the terms and conditions in the draft documents prepared by the WSLs, and the issuance of all required permits associated with same;
5. The Department shall issue the following permits to the Applicant: (1) Marina Permit MP-145/18; and (2) Subaqueous Lands Permit SP-145/1 and Water Quality Certification WQ-145/18. Said permits shall include all special conditions to ensure that Delaware's environment and public health will be protected from harm;
6. The Department adopts the Report and its attachments as further support for this decision;
7. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
8. The Department shall serve and publish its Order on its internet site, and shall provide legal notice of the Order in the same manner that the Department provided legal notice of the Application.



Shawn M. Garvin
Secretary