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DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
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Office of the
Secretary

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Secretary's Order No. 2018-W-0003

Re: Bayville Communities, LLC's Application for Permission under the Subaqueous Lands Act to Construct and Operate The Overlook Community Marina on Little Assawoman Bay, Selbyville, Sussex County

Date of Issuance: February 1, 2018

Effective Date: February 1, 2018

BACKGROUND AND PROCEDURAL HISTORY

Pursuant to 7 *Del. C.* §§ 6003, 6004(b), 6006(4), and the Subaqueous Lands Act, 7 *Del. C. Chap. 72* ("SLA") and other relevant authority, the Secretary of the Department of Natural Resources and Environmental Control ("Department") issues this Order approving an application ("Application") submitted by Bayville Communities, LLC ("Applicant") to the Department's Division of Water, Wetlands and Subaqueous Lands Section ("WSLS").

The Application requested the Department's approval under the SLA to use subaqueous lands for the construction and operation of The Overlook Community Marina ("Project"). The Project would be a water-based community amenity for the 168 unit residential development, The Overlook. The Project would be located on the development's waterfront property at the terminus of Ashlyn Road, Selbyville, Sussex County¹.

¹The Project would be located in an unincorporated area of Sussex County identified on Sussex County's Tax Map as 533-20.00, Parcel 140.00.

The WSLs properly provided public notice of the Application, and thereafter received a public comment that opposed the Application. The WSLs determined it was appropriate to hold a public hearing and the Department assigned Robert P. Haynes, Esquire, to preside over the public hearing.

The WSLs properly provided public notice of the public hearing and re-opened the public comment period until the conclusion of the public hearing. The Department held the public hearing, and did not receive any additional public comments at the hearing. The Record only includes the one public comment submitted, in writing, in response to the initial public notice.

Mr. Haynes requested WSLs's recommendation on the Application, which WSLs provided in a Technical Response Memorandum ("TRM"). The TRM reviewed the Application under the Department's *Regulations Governing the Use of Subaqueous Lands, 7 DE Admin. Code 7504* ("SLA Regulations") and its *Marina Regulations, 7 DE Admin. Code 7501* ("Marina Regulations"). The TRM also replied to the concerns raised in the public comment and did not recommend any changes to the Project based upon the concerns. The TRM recommended that the Department approve the Application subject to conditions in the following three draft approval documents: 1) Subaqueous Lands Permit SP-443/16 for the Applicant's use of its private subaqueous lands, 2) Subaqueous Lands Lease SL-443/16 for the Applicant's use of public subaqueous lands for ten years, and 3) Marina Permit MP 443-16 for the Applicant's operation of a twenty-five (25) slip marina. The WSLs' TRM also recommended approving the Applicant's draft Operations and Maintenance Plan ("O & M Plan") for a small marina.

Mr. Haynes prepared the attached Hearing Officer's Report ("Report"), which attached the TRM. The Report reviews the complete procedural history, establishes and summarizes the

Record, and provides findings of fact, reasons, and conclusions in support of its recommendation that the Department approve the Application for the Project based upon the WSLs' draft approval documents. The Report also discussed the public comment and recommended that the Department reject the public comment's suggested changes to the Project.

FINDINGS OF FACT

The Department finds that the Record, as established in the Report, supports approving the Application based upon the WSLs' draft approval documents identified above.

The Project would be a water-based community amenity for The Overlook, which is a 168 unit residential subdivision. Sussex County approved the plans for The Overlook on October 25, 2015, including the plans for the Project as one of the community's recreational amenities. The construction of The Overlook commenced and many residential units have been constructed and sold, and the other amenities, the clubhouse and pool, are under construction.

The Project's use of subaqueous lands would be for the proposed 25-slip marina, making changes to the beach area and to the shoreline stabilization, and adding a floating dock for non-motorized vessels that would be moored in the lagoon separate from the marina. The Project proposes to use existing structures, which the Project proposes to change.

The WSLs investigated the Project's proposed use of existing structures and recommended that the Department regulate them as after the fact, or grandfathered, approved structures because a prior owner of the property built these structures before the 1969 enactment of the SLA. The WSLs cited historic aerial photographs in the Department's records that showed the Project's location undeveloped in 1954 and developed in 1961. The Department finds that such grandfathered status is appropriate under Section 7205(d) of the SLA, which allows the Department to grant permission to use subaqueous lands after such use has occurred.

Sections 2.2.1.6 and 2.2.1.7 of the SLA Regulations provide further authority on the regulatory treatment of grandfathered structures and their use of subaqueous lands. The Record supports this grant where a new owner assumed ownership of the property.

The Applicant properly sought the Department's approval of the Project's proposed changes to the existing structures. The WSLs reviewed the proposed changes and found that they were consistent with the SLA Regulations and the Marina Regulations. The Report concurred with the WSLs review of the grandfathered status for the existing structures and the Project's proposed changes to them. The Report also recommended that the Department approve the Project under the SLA.

The Overlook subdivision contains 145.65 acres. The development is on the 48 acres of uplands, with the remaining acreage salt water or forested wetlands. The Project's location would be at the northern end of the development's waterfront property and, as noted above, would use existing structures. The use of the existing structures avoids any construction that would disturb wetlands along the remaining waterfront area that runs approximately 5,000 feet south of the Project along Little Assawoman Bay. The Project would be located next to the community's clubhouse and pool, and the residents using the Project would share the clubhouse's parking area and restrooms. The parking area meets Sussex County's and the Department's requirements. The clubhouse's restrooms would connect to central public water and sewer systems.

The Department reviews and regulates the Project's primary use of subaqueous lands for the proposed 25-boat slip marina, which would be a "small marina" and a "planned community marina" as defined by the Marina Regulations. The Department finds that the Applicant met its burden to support the construction and operation of the Project's small marina. The Applicant

submitted the required Siting and Design Study ("SDS") pursuant to Marina Regulation Section 11, as modified for small marinas by Section 13.4.1. The SDS supports the Project's location for a small marina. The Department finds the location is suitable for the Project's proposed small marina based upon the SDS, the TRM and the Report.

As noted above, the SDS cites the fact that the Project's location is the only waterfront area on the Applicant's property that will allow water access without disturbing any wetlands. Moreover, as a small marina, the Project provides in one central location the water access for the community and avoids having individuals separately seek approval of individual piers and docks along the development's 5,000 feet of shoreline. The Sussex County's current planning approval does not allow individual docks, which, if allowed in the undeveloped shoreline, would disturb wetlands.

The Project's 25-slip marina location will allow boat slips in water that is between 2.5 and 4.5 feet². The Applicant does not propose any dredging. The 25 boats slips would be located on Little Assawoman Bay that receives adequate water flow that will prevent any water quality problems from stagnation.

The Project also will replace the existing bulkhead, remove the timber groins and replace them with a single riprap groin, and re-nourish and re-contour the beach area with new sand. The Department finds that the Applicant adequately supported these proposed uses of the subaqueous lands and that WSLs recommends approval of these uses, which this Order approves based upon the WSLs' draft documents.

The Record also contains the Department's Division of Fish and Wildlife, Species Conservation and Research Program ("F & W") December 19, 2016, assessment for the Project,

² Based upon the North American Vertical Datum of 1988 (NAVD88).

which recommended time of year restrictions for any construction activity. One recommended restriction was to prohibit construction from March 1 through September 30 in order to protect summer flounder. The WSLs reflected this restriction in its approval documents. F & W also recommended no construction from April 15 through August 30 in order to protect horseshoe crabs. F & W also recommended that the sand used for the beach re-nourishment match the size of the grain of sand present at the Project's location. The WSLs' TRM and its draft approval documents reflect the F & W's recommended conditions.

The United States Department of the Interior's Fish and Wildlife Service also provided an April 27, 2016 review of the Project. This review expressed concern with any impacts on wetlands, but as noted above, the Project will not impact any wetlands.

The WSLs TRM provided its review and analysis of the applicable SLA Regulations and the Marina Regulations. The review discussed the SLA Regulations' Section 4.6, which requires consideration of the Project's Public Use Impacts. The TRM noted that the Project's proposed use of the lagoon was private subaqueous lands that did not require any public use analysis. The TRM determined that the Project's proposed use of public subaqueous lands for the pier and its expansion for use as consistent with public use because the pier extended the shortest length possible into Little Assawoman Bay to adequately berth the proposed 25 vessels. The TRM also noted that the community also would use the pier for recreational crabbing and fishing. The TRM determined that the Project's proposed marina would extend channelward 238 feet from the Applicant's mean low water line. This length is within the Section 4.9.2.5 of the SLA Regulations, which limits a channelward structure to no more than 250 feet, and limits structures to no more than 20% of the width of the waterway. The Application states that the width of Little Assawoman Bay at the Project's location is 3,500 feet, and the Department finds that the

Project satisfies the length limits in the SLA Regulations. The TRM determined that the Project would not pose any navigational concerns because there are no nearby docking facilities.

The TRM also reviewed the Project under Marina Regulations. The TRM cites Marina Regulations' Section 4.6.5. The TRM recommends finding that the Project satisfies this Section because the Project's proposed use for boat docking facility is consistent with the right of a riparian property owner to wharf out to access water.

The TRM addressed the public comment's suggestion that the Department not approve in water mooring of boats, but only approve a boat ramp with on-land boat storage. The TRM rejected this suggested change citing Marina Regulation Section 4.9.2.5, which allows a small marina to avoid justifying proposed in water mooring. The Department finds that mooring for 25 boats is appropriate without requiring a boat ramp, which the Marina Regulations do not require. A boat ramp would cause additional disturbance to the uplands and to the subaqueous lands. Moreover, Sussex County has not considered this change to the plans it approved. The WSLs did not recommend any boat ramp and public boat ramps are nearby in Fenwick Island. The TRM reviewed possible ways to minimize the impact of the Project, as required by Section 4.6.6 of the Marina Regulations, and concluded that the Project minimized the impacts from providing the community with 25 boat slips for the 168 residential units.

The TRM reviewed the SLA Regulations' Section 4.7 for environmental considerations. The WSLs found no reason to deny or modify the Application under this provision, and cited the O & M Plan as providing environmental protection for any possible environmental harm.

The WSLs reviewed the applicable Marina Regulations' provisions and found that the Project would comply with them. The TRM recommended not allowing any motorized vessels to use the Project's proposed moored float in the lagoon. This restriction is consistent with the

Application, which states that this float would be for non-motorized vessels such as canoes and kayaks. The WSLs also recommends restricting moored vessels to only the designated slips, which will ensure no more than 25 boats will use the Project's docking facilities. These conditions are included in the draft approval documents WSLs prepared and the Department adopts these reasonable restrictions.

The Department finds that the WSLs drafted documents provide reasonable conditions that will ensure the Project's use of private and public subaqueous lands are consistent with the Department's SLA and Marina Regulations.

REASONS AND CONCLUSIONS

The Department approves the Application subject to the reasonable conditions recommended in the WSLs's draft approval documents. The Department considered the concerns raised in the one public comment, which questioned the Project's location of the marina as too exposed to the wind and wave actions during storm events. The public comment suggested changes to the Project, as discussed above. The Department does not agree to the public comment's proposed changes based upon the reasons set forth in the TRM and the Report.

The public comment was from an adjoining property owner to the north of the Project's location who raised concerns that high winds and waves could damage boats or cause them to sink, which would cause environmental harm. The public comment suggested that the Department require the Applicant make changes to the Project's marina to protect the boats and the environment. The WSLs and the Report recommend that the Department not adopt the public comment's suggested changes to the Project.

The first change suggested was to require boatlifts for the boat slips. The WSLs informed the Applicant of the public comment's request for boatlifts, and the Applicant preferred

that owners or the proposed future marina's owner, which will be The Overlook Home Owners Association, make the decision to install boatlifts. The Department agrees it should not direct the installation of boatlifts, but instead would consider approving them upon the submission of a proper application for them. The SLA Regulations and the Marina Regulations do not require boatlifts for any boat docking structure. The Department prefers to allow an owner to decide to seek the Department's approval for a boatlift as opposed to requiring the Applicant to install them.

The public comment also suggested that the Department require the removal of all moored boats during the non-boating season. The WSLS TRM indicates that the Applicant includes language that requires the removal of boats by December 1, allowing their return on April 1. The Report agreed with the WSLS and determined that the O & M Plan provided sufficient protection of possible harm to the boats and environment between December 1 and April 1. The Department considers the time of year restriction as an appropriate measure to prevent harm to the boats when the owners are unlikely to use their boats.

The public comment also seeks to require the Department to not allow overnight mooring of boats, but instead only permit boats to use the mooring for daily use, and suggests a possible on land storage area with a boat ramp. The WSLS TRM and the Report recommend that the Department reject this suggested change because it is contrary to the Department's Marina Regulations, which do not require that a small marina justify having wet boat slips. The proposed restriction would severely limit the use of the boat slips. The Department is unwilling to require daily dry boat storage, particularly in light of the other safeguards provided in the O & M Plan. Individual boat owners and the marina's harbormaster are required to take protective

measures to safeguard the moored boats from damage before storms approach, and these measures include boat removal.

The public comment also suggested that the Project's marina not extend channelward but instead extend parallel to the shoreline. The WSLS and the Report recommend that the Department reject this suggested change. The Department agrees with the WSLS and the Report and finds that the proposed marina design meets the Department's regulatory requirements. The WSLS's review under the applicable Department regulations found no reason to alter the proposed design. This Order approves the Applicant's design for a proposed 25-boat slip small marina. The Department does not open the door or otherwise guarantee approval of any future expansion. Thus, the Department finds the proposed channelward pier is an appropriate marina design for the Project's location, and rejects the public comment's suggestion that the Department should require the Applicant to prepare alternate plans for the Department's consideration.

The Department concludes and directs the following:

1. The Department has jurisdiction under *7 Del. C. §§ 6003, 6004, 6006(4), 7 Del. C. Chap. 72*, and other relevant authority to make a final determination on the Application after holding a public hearing, considering the public comment, and other information in the Record;
2. The Department provided proper public notices of the Application and the public hearing pursuant to *7 Del. C. § 6004(b)*;
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 Record supports approval of the Application based upon the terms and conditions in the draft documents prepared by the WSLs. The permits and leases include reasonable conditions to protect the environment and public health;
5. The Department adopts the Report and the attached WSLs TRM as further support for this decision; and
6. The Department shall publish this Order on its web page, and the WSLs shall provide public notice of the Order's publication in the same manner as the WSLs provided public notice of the Application.



Shawn M. Garvin
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Shawn M. Garvin
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: Bayville Communities, LLC's Application for Permission under the Subaqueous Lands Act to construct and operate The Overlook Community Marina on Little Assawoman Bay, Selbyville, Sussex County

DATE: November 16, 2017

I. PROCEDURAL HISTORY

This Report to the Secretary of the Department of Natural Resources and Environmental Control ("Department") is on the November 7, 2016 application ("Application") submitted by Bayville Communities, LLC ("Applicant") to the Department's Division of Water, Wetlands and Subaqueous Lands Section ("WSLS").

The Application seeks permission under the Subaqueous Lands Act, 7 *Del. C.* Chap. 72 ("SLA") to use subaqueous lands for the construction and the operation of The Overlook Community Marina ("Project") located at the terminus of Ashlyn Road, Selbyville, Sussex County¹ at the northern end of The Overlook's waterfront property on Little Assawoman Bay.

On February 22, 2017, the WSLS published public notices of the Application in *The News Journal* and *The Delaware State News*, which commenced a public comment period that ended March 14, 2017. On March 14, 2017, the Department received a public comment. The WSLS determined to hold a public hearing, and the Department assigned me to preside over it and to prepare this Report of recommendations.

¹The Project would be located in an unincorporated area of Sussex County identified on Sussex County's Tax Map as 533-20.00, Parcel 140.00.

On May 3, 2017, the WSLs published public notices in *The News Journal* and *The Delaware State News* that announced that the Department would hold a public hearing at 6:00 P.M., June 8, 2017, at the Fenwick Island Town Hall, 800 Coastal Highway, Fenwick Island, Delaware. The public notice also re-opened the public comment period until the adjournment of the public hearing. The Department did not receive any new public comments during the public hearing's public comment period.

Following the public hearing, I requested the WSLs' recommendation on the Application and its response to the public comment. The WSLs provided the attached Technical Response Memorandum ("TRM") prepared by Julie R. Molina, WSLs' Environmental Scientist. The TRM thoroughly reviewed the Application for compliance with the Department's Regulations. The WSLs TRM recommended that the Department grant the necessary SLA permits and lease for the Project based upon the draft approval documents provided with the TRM.

I consider the Record, as established and summarized below, complete to support this Report's recommendation that the Department approve the Application and grant the Applicant the SLA permission consistent with the WSLs' draft approval documents. The WSLs provided with its TRM the draft approval documents.

II. SUMMARY OF THE RECORD

This Report establishes a Record that includes: 1) the verbatim transcript of the public hearing, 2) the documents submitted as exhibits at the public hearing, and 3) this Report, including the attached TRM and the documents referenced in this Report and the TRM.

At the public hearing, the WSLs submitted the following documents as exhibits:

- DNREC Ex. 1-the Application,
- DNREC Ex. 2-the legal notices of the Application,
- DNREC Ex. 3-the legal notices of the public hearing,'
- DNREC Ex. 4-the public comment of Bill Thompson,

DNREC Ex. 5-the Application Siting and Design Study ("SDS") for a marina,
DNREC Ex. 6-the Application's Operations and Maintenance Plan ("O & M
Plan") for a small marina,
DNREC Ex. 7-Sussex County's planning approval of The Overlook,
DNREC Ex. 8-the bulkhead step-out justification, and
DNREC Ex. 9-the Applicant's response to the public comment.

The Applicant's consultant, Edward Launay of Environmental Resource Inc., made a presentation that provided the following documents as exhibits:

Applicant Ex. 1-updates to the Application,
Applicant Ex. 2-amended plan drawing sheets 3 through 6,
Applicant Ex. 3-Sussex County's final planning approval, and
Applicant Ex. 4-final approved County site plan.

Other than representatives from the Applicants and the WSLs, only one person, a news reporter, attended the public hearing. The Record contains the one written public comment submitted in response to the Application's public notice.

The WSLs submitted its TRM that reviews the Application under the applicable Department Regulations. The WSLs recommends that the Department approve the Application subject to conditions in the WSLs' draft SLA approval documents consisting of Subaqueous Lands Lease SL-443/16 for the use of public subaqueous lands, Subaqueous Lands Permit SP-443/16 for the use of Applicant's private subaqueous lands, and Marina Permit MP-443/16 for the 25-boat slip planned community marina. The WSLs and I visited the Project's proposed location on June 8, 2017, and the WSLs made prior visits as part of its review of the Application and relied on old aerial photographs of the Project's location that were in the Department's files.

III. FINDINGS OF FACT

I recommend finding that the Department has all the information it needs to support the Department's final decision to approve the Application and grant the Applicant permission to use

subaqueous lands, subject to the reasonable conditions included in the above-identified WSLs draft approval documents.

The Project would be a water-based community amenity for The Overlook, which is a 168 unit residential subdivision. Sussex County approved the Applicant's plans for The Overlook on October 25, 2015, which included the Project as one of the waterfront area's recreational amenities along with the clubhouse and the pool that would be located on uplands adjacent to the Project.

The Applicant currently is constructing and selling residential units and the community's clubhouse and pool are under construction at a location adjacent to the Project. The Overlook subdivision contains 145.65 acres, of which 48 acres are uplands and the remaining land is wetlands. The community's residents who would use the Project also would use the clubhouse's parking area and restrooms.

The Department finds that a prior property owner built the existing structures that the Project would use. The WSLs researched its files to determine if the existing structures received any Department permission under the SLA and did not find any. The WSLs then researched the available aerial photographs in the Department's record and determined that the existing structures first appeared in the Department's 1961 aerial photograph. The WSLs determined from this evidence that the existing waterfront structure should receive after the fact SLA permission as grandfathered structures because they were constructed prior to the 1969 enactment of the SLA. I agree with this research and the WSLs' conclusion that the existing structures should receive after the fact grandfathered approval under the SLA.

The existing structures generally are described as the existing beach area with two groins and a breakwater, the existing pier and dock, the existing boat basin lagoon, and the existing

shoreline stabilization with bulkheading, rip-rap and breakwaters. This prior waterfront development was used by prior residential houses that formerly occupied the uplands near the Project's location, and aerial photographs depict boats moored in the lagoon as recently as 2012. I recommend that the Department grant the existing structures after the fact permission under Section 7205(d) of the SLA permission to use subaqueous lands. Sections 2.2.1.6 and 2.2.1.7 of the SLA Regulations provide further regulatory authority for after the fact approval of the existing structures use of private and public subaqueous lands under the SLA.

The Applicant properly sought the Department's approval of the Project's proposed changes to the existing structures.

The Applicant's SDS supports the Project's location and complies with Marina Regulation Sections 11 and 13.4.1. I recommend that the Department find that the proposed location is suitable for the Project's proposed small marina based upon the SDS, the TRM, and the Report. The location is the only waterfront area on the Applicant's property that will allow water access without disturbing any wetlands. Moreover, as a small marina, the Project provides in one central location the water access for the community and avoids having individuals separately seek approval of individual piers and docks along the development's 5,000' of shoreline. The location will allow boat slips in water that is between 2.5 and 4.5 feet² deep and the Applicant does not propose any dredging. The 25 boats slips would be located on an area of Little Assawoman Bay that will provide ample water movement to prevent any water quality problems from stagnation.

² Based upon the North American Vertical Datum of 1988 (NAVD88).

The Project also will make changes to the existing shoreline stabilization structures by replacing the existing bulkhead, removing two timber groins at the beach area and installing a single replacement riprap groin, and re-nourishing and re-contouring the beach area with new sand. I recommend that the Department approve these changes to the existing structures based upon the conditions included in the WSLS' draft documents.

The Department's Division of Fish and Wildlife, Species Conservation and Research Program ("F & W") provided a December 19, 2016 assessment for the Project that recommended time of year restrictions. One restriction to protect summer flounder was not to allow any construction during March 1 through September 30. The WSLS reflected this restriction in its approval documents. F & W also recommended no construction from April 15 through August 30 in order to protect horseshoe crabs. The F & W also recommended use of similar grain size sand for the beach renourishment as present at the Project's location.

The United States Department of the Interior, Fish and Wildlife Service, also provided an April 27, 2016 review of the Project, which expressed concern with any impacts on wetlands. The Project will not impact any wetlands.

The WSLS TRM provided its review and analysis of the applicable SLA Regulations and the Marina Regulations. The review discussed Sections 4.6's Public Use Impacts and noted that the Project's proposed use of the lagoon was private subaqueous lands that did not require any public use analysis. The TRM determined that the Project's proposed use of the pier for a 25 boat slip marina was consistent with public use as it extended the shortest length possible into Little Assawoman Bay to adequately berth 25 vessels that the community also would use for recreational crabbing and fishing. The TRM determined that the Project's proposed marina would extend channelward 238' from the Applicant's mean low water line. This is within the

SLA Regulations' limits as established by Section 4.9.2.5. The Project's structure will not extend channelward more than 250' from the low water line and it will not extend channelward more than 20% of the waterway's width, which the Application states is 3,500'. The TRM determined that the Project would not pose any navigational concerns because there are no nearby docking facilities.

The TRM also reviewed the Project under SLA Regulation Section 4.6.5 to determine if the Applicant could avoid the use of subaqueous lands. The WSLs found that the Applicant's 5,000' of shoreline on Little Assawoman Bay property may be used by the Applicant to exercise the right to wharf out to access water from its riparian boundary. I agree that the Project represents a preferred method to provide water access than individual docks that otherwise would provide water access if the County approved such a change to its planning approval.

The public comment noted the possible use of a boat ramp and on-land boat storage. The TRM considered that the Marina Regulations' Section 4.9.2.5 applied to avoid justification of in-water mooring. Given the grandfathered status granted for the existing use of subaqueous lands, the Department finds that in-water mooring for 25 boats is appropriate and because the Project would be a small marina and the Marina Regulations exempt small marina from the requirement to justify proposed in-water mooring. Moreover, a boat ramp would cause additional disturbance to the uplands and to the subaqueous lands. The WSLs did not recommend any boat ramp, and public boat ramps are nearby in Fenwick Island. The TRM conducted a similar analysis of the minimization required by SLA Regulation Section 4.6.6 and did not require any minimization because the Project satisfied the Marina Regulation's requirement that the Department consider possible minimization of the Project's impacts on the environment.

The TRM reviewed the SLA Regulation's Section 4.7 for environmental considerations and found no reason to deny or modify the Application under this provision, and cited the O & M Plan as providing environmental protection for any possible environmental harms.

The WSLS reviewed the applicable Marina Regulations' provision and found that the Project would comply with them. The TRM recommended not allowing motorized vessel use to use the Project's proposed moored float in the lagoon. The Department allows this float for use by non-motorized vessels. The TRM also recommended that boats only use the designated mooring space for mooring. These conditions are included in the draft approval documents WSLS prepared.

The Project's component that will use the most subaqueous land area is the proposed expansion of the existing pier and dock. This expansion will allow mooring for 25 boats in 24' long by 12' wide boat slips. The proposed marina has several building components. The first component proposes to widen the existing 6' wide pier by adding 2' to its southern side so that it will be an 8' wide pier extending 28' into Little Assawoman Bay. The second construction component would expand southward the existing 11' wide by 13' dock at the end of the existing pier. This new dock extension would be 8' wide and extend parallel to the shoreline 42' and provide a boat slip on the landward side. The third construction component is a new 6' wide pier that would extend channelward 196' from approximately the middle of the new dock extension. The fourth construction component would install ten finger piers, each 4' wide by 24' long (five on each side), on the new pier extension to provide twenty four 24' long by 12' wide boat slips. The fifth component is to add an 8' wide by 54' long dock at the end of the new pier extension. The final component is to add twelve water and electric pedestals to the pier extension and to

provide safety equipment and pumpout equipment in a nearby storage building. The marina would use the clubhouse's parking lot and restrooms.

The Project's changes to the non-marina purposes are: 1) installing an 8' wide by 24' long floating dock for non-motorized vessels moored to two pilings in the lagoon, and 2) replacing 450 linear feet of the lagoon's existing bulkhead and 12 linear feet of timber breakwater at the lagoon's northern access to Little Assawoman Bay.

For the Project's beach purposes, the Project proposes to remove 68' of bulkhead. In addition, the Project would remove two timber groins and install a single 32' rip-rap groin and add 24 cubic yards of sand to replenish the beach area north of the existing pier.

The Project's proposed boat docking would use subaqueous lands for a "Residential or Planned Community Marina" as defined by the Department's Marina Regulations. The Project will be used only by The Overlook community and it would not have any commercial operations. The Project does not propose to provide any full service marina service. The Application included details on the proposed operations, which include a portable pump out equipment stored in the small storage building near the community clubhouse, and proper signage. The Plan discusses the future transfer of the Project to The Overlook Homeowners Association upon the completion of the development.

The Department reviews the Project as a proposed small marina reviewed under Section 13.0 of the Marina Regulation based upon the proposed construction of 25 boat slips. The Marina will have access to central public utility water and sewer systems. This classification allows the Applicant to avoid justifying the use of wet boat slips as opposed to dry boat slips or on land storage based upon Marina Regulation Section 13.4.1.1. I find that the Applicant

satisfied the requirements for constructing and operating the Project's small marina based upon the changes to the existing structures.

IV. REASONS AND CONCLUSIONS

I recommend that the Department approve the Application subject to the reasonable conditions recommended in the WSL's draft approval documents. The WSL considered the concerns raised in the one public comment, which questioned the Project's location of the marina as too exposed to the wind and wave actions during storm events. The public comment suggested changes to the Project, as discussed above. I recommend that the Department not agree to the public comment's proposed changes based upon the reasons set forth in the TRM.

The public comment was from an adjoining property owner to the north of the Project's location. He raised concerns that storms may produce high winds and waves and could damage boats or cause them to sink, which he claimed may cause environmental harm by releasing pollutants into the water. He suggested that the Department require the Applicant to install boatlifts.

The WSL recommends that the Department not adopt the public comment's suggestion to require boatlifts. I agree with this recommendation. The WSL informed the Applicant of the public comment's request as part of its informal effort to resolve the public comment without holding a public hearing, but the Applicant indicated that boat owners should make the decision to install boatlifts or the proposed future marina's owner, which will be The Overlook Home Owners Association. I agree with the WSL that the Department should not mandate boatlifts for the Project's 25 mooring slips, but should allow owners to decide whether they want to use boatlifts to provide additional protection. The Department's regulations do not require boatlifts under any circumstances and the Department prefers to establish any regulatory requirement in a

regulation, particularly when it may be required for other boat dock facilities. Absent special compelling circumstances that are not present in the Project, the Record does not support requiring boatlifts for the 25 boat slips, but boat owners or the future marina owner may apply to install boatlifts on one or more boat slips.

The public comment also suggested that the Department require that owners of the boats using the Project should be required to remove their boats from the water during the off-season. The WSLs TRM indicates that the Applicant includes language that requires the removal of boats by December 1 and allowing their return on April 1. I agree with the WSLs recommendation. I recommend approving the Applicant's proposed O & M Plan, which provides sufficient protection of possible harm to the boats and environment between December 1 and April 1. The Department considers the time of year restriction an appropriate measure to prevent harm to the boats when the boat owners are unlikely to use their boats.

The public comment also seeks to require the Department to not allow overnight mooring of boats, but instead only permit daily use. The WSLs TRM recommends that the Department reject this suggested change because it is contrary to the Department's Marina Regulations, which do not require that a small marina justify having wet boat slips. The proposed restriction would severely limit the boat owners use of their slips, unlike the reasonable restriction for the non-boating season land storage. Absent authority in the Marina Regulations, the Department is unwilling to require daily dry boat storage, particularly in light of the other safeguards provided in the O & M Plan. The boat owners and the marina's harbormaster are required to take protective measures to safeguard boats from damage when storm events may occur, and these measures include boat removal.

The public comment also suggested that the Project's marina not extend channelward but instead extend parallel to the shoreline. The WSLS recommends that the Department reject this suggested change. I agree with the WSLS. This change is not required to comply with the regulations. Thus, I recommend that the Department find the proposed channelward pier with finger docks is an appropriate marina design for the Project's location.

I provide the following conclusions and ordering paragraphs consistent with the Report's recommendations:

1. The Department has jurisdiction under *7 Del. C. §§ 6003, 6004, 6006(4), 7 Del. C. Chap. 72*, and other relevant authority to make a final determination on the Application after holding a public hearing, considering the public comments, and other information in the Record;
2. The Department provided proper public notices of the Application and the public hearing pursuant to *7 Del. C. § 6004(b)*;
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 Record supports approval of the Application based upon the terms and conditions in the draft documents prepared by the WSLS and in the record as an attachment to the TRM. The permits and leases includes reasonable conditions to protect the environment and public health;
5. The Department adopts the Report and its attached WSLS TRM as further support for this decision; and

6. The Department shall publish this Order on its web page, and the WSLs shall provide public notice of the Order in the same manner as the WSLs provided public notice of the Application



Robert P. Haynes, Esquire
Senior Hearing Officer



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-9943
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Technical Response Memorandum

To: Robert Haynes, Hearing Officer

Through: Virgil Holmes, Director, Division of Water *10/20/17*
Steven Smaller, Environmental Program Administrator, Division of Water *[Signature]*

From: Julie R. Molina, Environmental Scientist, Wetlands and Subaqueous Lands Section *JRM*

Date: October 11, 2017

Subject: Bayville Communities, LLC, Marina and Subaqueous Lands Permit Application
and Subaqueous Lands Lease Application

INTRODUCTION

On November 7, 2016, the Wetlands and Subaqueous Lands Section (WSLS), Division of Water, Department of Natural Resources and Environmental Control received an application from Environmental Resources, Inc. submitted on behalf of Bayville Communities, LLC to construct a 25 slip minor community marina, to re-contour an existing beach area and to install shoreline stabilization in the Little Assawoman Bay and an adjacent lagoon, at the terminus of Ashlyn Road, Selbyville, Sussex County, Delaware. The proposed project is subject to the requirements of the Subaqueous Lands Act (7 Del C., Chapter 72) and Regulations Governing the Use of Subaqueous Lands, and the Marina Regulations.

The project was placed on 20-day public notice on February 22, 2017. During this public notice period the WSLs received one letter of objection to the project from Phillip G. Thompson. The objection stated that the location of the proposed marina is unsafe, especially during storm events, since the proposed marina location is in an unprotected area with a long fetch. In addition, the comment stated that the activity would lead to even more development which would further degrade the current pristine aesthetics of the Little Assawoman Bay. During a telephone conversation with the project scientist, Mr. Thompson additionally stated that the public was inadequately informed of the proposed project; the project is in a remote area and only Mr. Thompson and the developer received direct notification of the project. No written comments were received in support of the application. After a discussion with Senator Gerald Hocker and Representative Ronald E. Gray, it was determined that it was in their constituents' best interest to further inform the public of the proposed activity and hold a public hearing.

The applicant, Bayville Communities, LLC., proposes to construct a new 25 slip marina consisting of a 2 foot width expansion on the existing 28 foot long pier, an 8 by 42 foot long dock extension, a 6 by 188 foot long pier, ten (10) 4 by 24 foot long finger piers, an 8 by 54 foot long dock, 27 mooring pilings, an 8 by 24 foot long floating dock, to repair by installing 450 linear feet of bulkhead immediately in front of the existing bulkhead and replace 12 linear feet of breakwater bulkhead in the same footprint as existing, remove 68 linear feet of bulkhead, remove two timber groins and to repair by replace one timber groin with 32 linear feet of a rip-rap groin, and install 1,580 square feet of sand material for beach replenishment in the Little Assawoman Bay and an adjacent lagoon located at the terminus of Ashlyn Road, Selbyville, Sussex County, DE

The public hearing was held on June 8, 2017. The public hearing was attended by WSLs staff, the applicant, his consultant, and a newspaper reporter. During the Public Hearing the Hearing Officer, Robert P. Haynes, presented the exhibits of the public records from the Department. Subsequently, the applicant's consultant gave a brief presentation and submitted additional exhibits. He concluded by stating that the conditions of Sussex County Council approval required construction of a pier as an amenity for the community. Since no one from the public attended and no one signed up to speak, the record was closed thereafter.

This Technical Response Memorandum (TRM) presents the Wetlands and Subaqueous Lands Section's (WSLS) findings regarding the above-referenced permit application, the public comment received during the public notice period and the testimony given during the public hearing.

REGULATORY REVIEW- SUBAQUEOUS LANDS

The following review evaluates the proposed project with respect to the requirements of the Subaqueous Lands Act (7 Del. C., Chapter 72 (Chapter 72) and the Regulations Governing the Use of Subaqueous Lands (Regulations) adopted in accordance with the statute. The Regulations provide the criteria for evaluating projects that are proposed to be constructed in public or private subaqueous lands. The burden is on the applicant to satisfy the Department that the requirements of these Regulations have been met; and if the granting of the permits, lease or approval will result in loss to the public of a substantial resource, that the loss has been offset or

mitigated. The Department's regulatory evaluation and the public comment received are addressed according to the pertinent sections of the Regulations as follows.

Section 4.0 Criteria of Permits, Leases and Letters of Authorization - Evaluation Considerations. Each application shall be reviewed based on the consideration of the performance specifications, standards and other criteria listed in this section for the type of activity proposed.

The most relevant portions of Section 4.0 for the proposed project are discussed below. This includes Section 4.6 - Public Use Impacts, Section 4.7 - Environmental Considerations, Section 4.9 – Boat Docking Facilities, Section 4.10 Installation and Use of Shoreline Erosion Control Measures and Section 4.12 Creation of Lands.

Section 4.6 Public Use Impacts - The Department shall consider the public interest in any proposed activity which might affect the use of subaqueous lands.

The lagoon is privately owned by the applicant, so any authorized activity within the lagoon would not directly affect public use. All proposed activities within public subaqueous lands require a lease from the State of Delaware. The Wetlands and Subaqueous Lands Section concludes that public use impacts will be minimized or avoided by the proposed structure which is designed to meet the requirements for all boat docking structures. The applicant has designed the structure to extend into the waterbody at the shortest length possible to adequately berth 25 vessels and provide recreational crabbing and fishing to the community. Lastly, the draft Operations and Maintenance plan submitted with the application addresses any potential harm to the environment and corrective action to take during an emergency.

4.6.3 - The potential effect on the public with respect to commerce, navigation, recreation, aesthetic enjoyment, natural resources, and other uses of the subaqueous lands.

The proposed docking facility will be placed within the waters of the Little Assawoman Bay. Pursuant to Section 4.9.2.5 of the Regulations Governing the Use of Subaqueous Lands which states, in relevant part, "*In no case shall a structure extend more than 20 percent of the width of the waterbody, nor shall it extend seaward more than 250 feet, except under exceptional circumstances necessary to provide access for needed commerce*". In tidal waterbodies, 20 percent is measured from the mean low water mark of one side of the waterbody to the mean low water mark of the other. The docking facility is proposed to extend 238 feet channelward of the mean low water mark and is far from exceeding 20 percent of the width of the waterbody. The length of the structure is justified to accommodate 25 slips. Navigation issues should be minimal since neighboring docking facilities do not lie within the vicinity of the proposed marina and therefore access to navigation channels are not impaired. The letter of objection to the project included a request to "*minimize the distance channel-ward and instead provide an alternative which runs parallel to the shoreline instead of perpendicular*". Since the channelward encroachment of the structure falls within the parameters of the above-referenced regulation, there is no regulatory justification to deny the right to encroach channelward.

The Little Assawoman Bay is publically owned and it is open for public use. The primary users are property owners adjacent to the Little Assawoman Bay and the general public participating in boating, watersports, fishing, and crabbing. The Little Assawoman Bay is already a publically

used waterbody; therefore, it is not anticipated that there will be any significant adverse effects on recreation or aesthetic enjoyment with the addition of 25 more boats.

4.6.5 - The extent to which the applicant's primary objectives and purposes can be realized without the use of such lands (avoidance).

The applicant owns over 5,000 feet of waterfront property and has the right to wharf out and access the water from their riparian property boundary. The proposed location is the most suitable area to develop a docking facility on their riparian property boundary due to the surrounding adjacent wetlands. The applicant is practicing avoidance to a certain degree by not proposing any construction activities through wetlands and eliminating the opportunity or ability for any additional structures to impact public subaqueous lands.

The letter of objection included a request to *“providing a boat ramp and related boat storage area in order to encourage day-use instead of the marina concept”*. Since the proposed marina is considered to be a minor marina, it qualifies for modified requirements pursuant to Section 4.9.2.5 of the Marina Regulations which states, in relevant part, *“Applicants need not provide justification for wet slip vessel and storage as required”*. The consolidation of vessel facilities into a marina is considered a minimization of possible activities in public subaqueous lands and a reduction of environmental impacts. The proposed marina would be providing water access to 168 units in the community.

4.6.6 - The extent to which the applicant's primary purpose and objectives can be realized by alternatives, i.e. minimize the scope or extent of an activity or project and its adverse impact.

The applicant has requested 25 slips for a community composed of 168 units. The proposed activity is currently minimized in comparison to the potential wishes of the residents of the community. In addition, the applicant is applying for one structure to serve the entire community which minimizes the potential impacts on subaqueous lands and the adjacent wetlands from multiple structures.

Section 4.7 Environmental Considerations

4.7.1.1 Any impairment of water quality, either temporary or permanent which may reasonably be expected to cause violation of the State Surface Water Quality Standards. This impairment may include violation of criteria or degradation of existing uses.

An evaluation of water quality and scientific data was submitted by the consultant as part of the Siting and Design Study of the marina as discussed below in Section 11.3. The construction activity and structures associated with the marina will have treated lumber that can leach contaminants; however, this is mostly during the first few months after installation and can be considered minimal. In addition, the proposed marina has minimized potential sources of contamination by prohibiting fish cleaning within the waters of the marina, by not providing fueling facilities, and by not allowing major vessel maintenance work to be done on the grounds of the marina. Additionally, as discussed in further detail in Section 14.2 below, an Operations and Maintenance (O&M) Plan for the marina was submitted by the consultant. The O&M Plan has rules and regulations for users of the marina which contains best management practices and tips for boaters. This includes ways to control oil in the bilge, management of vessel sewage disposal, trash and recycling.

4.7.1.3 Any harm to aquatic or tidal vegetation, benthic organisms or other flora and fauna and their habitats.

The docking facility will cause some shading, but should allow for the growth of aquatic vegetation and the continued use of the area by benthic organisms. The waterbody is currently used by the general public and currently contains hundreds of docks and the addition of one docking facility should not have a significant adverse impact.

4.7.1.4 Any loss of aquatic habitat.

The applicant is requesting to fill subaqueous lands which will therefore result in a loss of aquatic habitat. The total loss of aquatic habitat is proposed to be 1,882 square feet; consisting of 1,580 square feet of sand material for beach re-nourishment and 302 square feet for bulkhead repair by stepping-out for shoreline stabilization. The installation of the repair of the bulkhead is discussed in detail in Section 4.10.1.4 below and the beach fill material is discussed in Section 4.12.1.

Section 4.9 Boat Docking Facilities

4.9.2.1 Structures should be sheltered or protected from storm-driven currents, waves, and ice in an area with low or moderate normal currents and littoral drift.

The letter of objection to the project stated the following: *“Given the location of this facility and the fact that the fetch from the East and Northeast is between 5000 and 8000 feet I would strongly discourage the idea of mooring boats in this very unprotected situation. It is not uncommon to have storms especially during the shoulder season (May, September) that result in high winds and significant tidal surge. I would surmise that many of the boats and property owners who are not full time residents would simply leave their boats in the slip and at the mercy of mother nature. Suffice it to say that this plan may not end well for some and could easily result in significant property damage and/or environmental damage if a vessel sinks.”* The fetch at the proposed marina location is a considerable distance. The WSLs suggested to the consultant to install boat lifts to provide safer conditions for moored vessels during storm events. The consultant said that since the application did not propose any boat lifts, they did not want to add them at this time. However, the communities’ Homeowners Association might apply for them at a later time when the slips are divided up to the community members at their own cost. The submitted Operations and Maintenance (O&M) Plan included information on safety precautions during hurricanes and severe weather events as required. As stated in the O&M Plan, boats are to be removed from the water during severe weather events. If this is not possible, loose gear should be removed from the vessel and the vessel should be secured with additional lines and fenders if needed. The Harbormaster will inspect moored vessels prior to a severe weather event and if precautions have not been taken, the Harbormaster has the discretion to take necessary measures to properly secure a vessel. Additionally, vessels are to be removed for winter storage by December 1st and spring launching is to take place after April 1st.

Section 4.10 Installation and Use of Shoreline Erosion Control Measures

4.10.1.2 - Efforts shall be made to utilize shoreline erosion control methods that best provide for the conservation of aquatic nearshore habitat, maintain water quality, and

avoid other adverse environmental effects. These include, but are not limited to, vegetation, revetments, and gabions.

The applicant is proposing to remove two timber bulkheads that are currently functioning as groins to dissipate wave energy adjacent to the existing beach area. These are grandfathered structures and can be replaced in-kind. However, the applicant is replacing only one groin with riprap, which provides for more aquatic habitat than vertical walled groins.

4.10.1.4 Vertical-walled structures shall be allowed only where a non-vertical structure, designed to equal standards, would be ineffective to control erosion, where deleterious environmental effects associated with the construction of vertical structures would be less than the impacts on the adjacent environment during construction of a non-vertical structure, where functionally, no practical alternatives exist for certain water-dependent facilities or activities, or where generally accepted engineering practices would preclude the use of non-vertical walled structures.

The shoreline at the site is primarily stabilized with an existing grandfathered bulkhead. The applicant has proposed to repair the bulkhead by stepping out immediately in front of the existing wall to install a new bulkhead. The practice of “stepping-out” in order to repair an existing bulkhead is only deemed acceptable if there is adequate justification provided. The consultant submitted justification for the bulkhead step-out upon request of the project scientist. He lists the difficulty in construction of in-kind replacement especially at the 40 foot wide by 50 foot long portion of uplands that juts out from the shoreline. The tie backs to the dead man system would intersect at the corners of this upland area and cause major construction difficulties. Since the applicant would likely lose that upland portion if they tried to do an in-kind replacement, the WSLs deems the repair method by stepping-out acceptable but the activity in public subaqueous lands would be subject to annual Lease fees. A discussion of annual Lease fees is detailed below in Section 4.12.1. The total loss of subaqueous lands by the proposed method of bulkhead repair is 302 square feet; composed of 106 square feet in public subaqueous lands of the Little Assawoman Bay and 196 square feet in the privately owned waters of the grandfathered man-made lagoon. The lagoon is privately owned by Bayville Communities and has been in existence prior to the Subaqueous Statute. The bulkhead step-out in the lagoon is deemed minimal since it is impacting subaqueous lands that already have low water quality due to the limited ability for a continual flushing of waters.

4.12 Creation of Lands

4.12.1 Creation. No person shall fill, reclaim, or alter public subaqueous lands without the Department approval and receipt by the Department of full payment of a lease fee for the estimated area of land created or affected. The land created shall remain State property and may be leased to the applicant under terms and conditions to be set by the Department.

The total loss of public subaqueous lands, channelward of the mean low water line, is proposed to be 1,306 square feet; composed of 1,200 square feet of sand fill material for beach re-nourishment and 106 square feet for bulkhead repair by stepping-out for shoreline stabilization. The purpose of the sand fill material is to replenish and re-contour the existing beach area. A shoreline is a dynamic system and does not remain static. Sediments are naturally transported and result in accretion and erosion as waves repeatedly hit a shoreline. Although the proposed beach fill would

be speeding up the accreted sediments in this area, it is deemed as having a minimal impact since it is not a large amount and would naturally occur anyway. In addition, the beach fill would be composed of 100% clean coarse sand material. A discussion of the bulkhead repair can be referenced above. In accordance with 68 Delaware Laws, Volume 1, Chapter 86, Section 14, the Lessee is subject to annual lease fees at a rate of \$.10/sqft/year for the beach fill material and \$1.00/sqft/year for the bulkhead step-out repair channelward of mean low water in public subaqueous lands. The annual Lease fee of \$226.00 is included as a special condition of the draft Subaqueous Lands Lease.

REGULATORY REVIEW – MARINA REGULATIONS

The following review evaluates the proposed project with respect to the requirements of the Marina Regulations. The Regulations provide the criteria for evaluating projects that are proposed to be constructed in subaqueous lands. The burden is on the applicant to satisfy the Department that the requirements of these Regulations have been met; and if the granting of the permit will result in loss to the public of a substantial resource, that the loss has been offset or mitigated. The Department's regulatory evaluation and the public comment received are addressed according to the pertinent sections of the Regulations as follows.

Section 6.0 Subaqueous Lands Requirements - All new marinas or marina alterations must comply with subaqueous lands requirements as described in 7 Del.C., Ch. 72 and the 7504 Regulations Governing the Use of Subaqueous Lands.

A review of the Subaqueous Lands requirements, as stated above, found that all portions of the project are consistent with the Subaqueous Lands Act (7 Del C., Chapter 72) and Regulations Governing the Use of Subaqueous Lands.

Section 7.0 Consistency with Zoning Plans - The applicant shall provide evidence of zoning approval for proposed marina projects. The Department may defer consideration of an application if it determines that substantive questions regarding the zoning status for the proposed project actions are raised in a zoning appeal.

During the review process of the proposed marina, evidence of County zoning approval was requested. On April 3, 2017, the WSLs received a plan titled "Amended and Restated Final RPC Site Plan & Subdivision Plat for The Overlook Phase One". The plan was stamped for approval by the Sussex County Planning & Zoning Commission dated October 26, 2015 with a linear pier clearly shown on the plans. The associated Ordinance from the Sussex County Council also referenced the pier in two separate conditions. Condition No. 5 states the following: "*The pool and clubhouse shall be constructed and open to use within two years of the issuance of the first building permit for a residential unit within the project. In addition, the remainder of the recreational facilities and amenities shall be constructed and open to use by residents of the development within two years of issuance of the first building permit. These additional recreational facilities shall include play courts, pocket parks, gazebos, a pier, pathways and trails.*" Condition No. 19 also referenced the pier by stating the following: "*Aside from the community pier and any existing pier or boat ramp, no other piers or boat ramps shall be permitted.*" Also submitted on April 3, 2017, was a detailed site plan titled "Recreational Area Site Plan for The Overlook for Bayville Communities, LLC.". This plan was stamped for approval by the Sussex County Planning & Zoning Commission dated June 13, 2016 and

depicted the 25 slip docking facility structures as submitted by the applicant to the WSLs. Although the conditions of the Site Plan didn't specifically state a "marina", Condition No. 5 and No. 19 reference the pier as being for use of the "residents of the development" and as a "community pier". Also, since the "Recreational Area Site Plan" depicted the 25 slip docking facility, the WSLs determined that enough evidence of zoning approval was submitted.

The applicant's consultant spoke of Ordinance Condition No. 5 from the Sussex County Council (as referenced above) as part of his testimony during the public hearing and throughout the processing of the application. He stated the following during the public hearing: *"And I just wanted to note that on page two it concludes the special conditions of approval by the County, and condition five of which states that, subject to getting all required state and federal permits, that the applicant is required to construct the proposed pier as proposed as an amenity for the community."* Pursuant to 7 Del. C. § 7206(a), which states, in relevant part: *"...Pursuant to this chapter, the Secretary shall have exclusive jurisdiction and authority over all projects to convey a fee simple or lesser interest or to grant easements with respect to subaqueous lands belonging to the State. All jurisdiction and authority to convey a fee simple or lesser interest or to grant easements over subaqueous lands as to which grants have been made or may be made is vested in the Secretary...."* Although the Sussex County Council can authorize zoning approval of a marina structure, it is not a guarantee of State permitting approval since the Secretary of DNREC has exclusive jurisdiction and authority in granting Subaqueous Land Leases.

Section 11.0 Requirements for Siting and Designing New Marinas - This section describes the requirements, restrictions, and limitation criteria for new marina development....New marina applications must include a Siting and Design Study that demonstrates how the proposed marina meets the criteria of this section.

Permitting requirements for the Siting and Design (S&D) Study for new minor marinas (25 slips and less) are modified in order to reduce environmental impacts by encouraging consolidation of vessel docking facilities. An S&D Study with associated documentation was submitted as part of the marina application.

11.3 Environmental siting considerations.

The S&D Study explored environmental siting considerations as required. The consultant submitted historic water quality data representative of on-site conditions in the Little Assawoman Bay obtained from the Delaware Environmental Monitoring and Analysis Center (DEMAC) as well as water quality data collected by Environmental Resources, Inc. Early morning dissolved oxygen (DO) levels fell below 4.0 mg/l only between 0 to 10 percent of summer mornings, which is considered a healthy standard for DO levels in the area. Although the water quality data also included information to address fecal coliform concentrations, the marina is located in an area already closed for shellfish harvesting. Upon on-site assessments by Environmental Resources, Inc., submerged aquatic vegetation is currently not present at the marina site. Also included was a review from DNREC, Division of Fish and Wildlife and the Delaware Office of Historical and Cultural Affairs indicating that the construction of the marina will not impact any historical cultural resources, threatened species, endangered species, or their critical habitats. Specific time of year restrictions for the construction activity were advised and implemented by the project scientist as a special condition of the draft Subaqueous Lands Lease and Subaqueous Lands Permit. Additionally, the marina is to be located in an area that will provide water access

without directly impacting any of the adjacent State-regulated tidal wetlands and non-tidal forested wetlands.

11.4 Planning and design requirements

The S&D Study also explored planning and design siting considerations as required. The applicant plans to reconfigure the current structures by expanding it for community use. The marina is to be located on open waters of the Little Assawoman Bay which makes it optimal for maximum flushing. Although the marina includes the existing lagoon, the lagoon basin is to be used for non-motorized vessels only. This is also included as a special condition of the draft Marina Permit and Subaqueous Lands Permit. The special condition is stated as follows: *"Vessels may only be moored at the designated slips on the approved plans. There shall be no motorized vessels moored within the lagoon. The 8 foot wide by 24 foot long floating dock in the lagoon shall only be used for non-motorized vessels."* The special condition specified the vessel location to ensure that the marina serves 25 slips as requested, which qualifies for minor marina status and therefore reduced requirements under the Marina regulations. The S&D Study also addressed the prospect of future dredging. A bathymetric survey for water depths was conducted at the site. Adequate water depths already exist at the marina site, ranging from approximately -2.5 to -4.5 NAVD 88, and should persist since the marina extends into an open bay where flushing conditions are greater. The shoreline at the site is primarily stabilized with existing bulkhead. As discussed above, the bulkhead repair adjacent to public subaqueous lands will be subject to annual Lease Fees. In addition, the project does not adversely impact boat navigation since neighboring docking facilities do not lie within the vicinity of the proposed marina and therefore access to navigation channels are not impaired. The applicant addressed the daily operations of the marina by submitting an Operations and Maintenance Plan for approval.

Section 14.0 Marina Operation and Maintenance (O&M) Plan

14.2 Marina operations and maintenance (O&M) plan. This section of the Regulations presents the requirements for obtaining a marina operations and maintenance (O&M) plan. It applies to all marinas in the State of Delaware, whether existing, under construction, or proposed.

A complete O&M plan was submitted as part of the marina application. The O&M Plan addressed compliance with statutory requirements by including information on the marina layout, the disposal of waste material, emergency operations, rules and regulations for marina users, and other items. After consultation with the Sussex County Fire Marshal, plans were updated to show fire protection systems on the pier. Furthermore, the marina will be providing a portable marine pumpout station for the disposal of vessel sewage. Pending associated subaqueous and marina authorizations for the construction activity, the O&M plan will be authorized for approval and must be re-submitted for periodic re-approval every four years.

CONCLUSION

The WSLS finds that the activity described in the application for the Marina Permit, Subaqueous Lands Lease and Subaqueous Lands Permit by Bayville Communities, LLC. (including the installation of docking structures for a community marina, the re-nourishment of the existing beach area and the installation of shoreline stabilization) complies with the Regulations

administered by the WSLs. Since no one in opposition to the project was in attendance at the Public Hearing, the WSLs determined that public concern was minimal.

The applicant has applied for one structure to serve the entire community which the WSLs views positively since this reduces an overall environmental impact instead of constructing multiple structures. Single family homes are prevented from constructing individual boat docking facilities per the Sussex County Council Ordinance Condition No. 19 as referenced above. Also, public use impacts have been minimized since the applicant has requested 25 slips for a community composed of 168 units.

Furthermore, the proposed activity provides water access without directly impacting any of the adjacent State-regulated tidal wetlands and non-tidal forested wetlands which make up approximately two thirds of the site. The commenter objecting to the project was concerned this project would lead to further development of the pristine wetlands but no such request has been made at this time. Instead, the applicant has practiced avoidance of the adjacent wetlands.

Additionally, annual Lease fees would be established for the 1,306 square feet of filled public subaqueous lands located channelward of the mean low water line. The stepping-out to repair the bulkhead would provide minimal loss of aquatic habitat in comparison to the potential environmental impacts associated with an in-kind bulkhead replacement due to the difficulty of construction with the associated landscape. Likewise, the beach fill is minimal and would likely naturally occur over time. Since the beach area will be privately used by the members of the community, they will have to pay for their use yearly by the establishment of the annual Lease fee.

The proposed marina has minimized potential sources of contamination by prohibiting fish cleaning within the waters of the marina, 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 users of the marina which contains best management practices and tips for boaters. This includes ways to control oil in the bilge, management of vessel sewage disposal, trash and recycling. Also included, is procedures on the safety precautions implemented during hurricanes and severe weather events.

In the event the Secretary determines that this project should be approved, included are draft permits with appropriate conditions for consideration.



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

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-9943
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Bayville Communities, LLC
c/o Thomas Natelli
506 Main Street, Suite No. 3
Gaithersburg, MD 20878
Tax Parcel: 5-33-20.00-140.00

Subaqueous Lands Lease: SL-443/16
Associated Marina Permit(s): MP-443/16
Associated Permit(s): SP-443/16
Date of Issuance:
Construction Expiration Date:

**SUBAQUEOUS LANDS LEASE
TO CREATE A NEW TWENTY-FIVE (25) SLIP MARINA**

GRANTED TO:

Bayville Communities, LLC

TO CONSTRUCT AND UTILIZE THE FOLLOWING STRUCTURES:

**A 2 foot width expansion on the existing 28 foot long pier,
An 8 foot wide by 42 foot long dock extension,
A 6 foot wide by 188 foot long pier,
Ten (10) 4 foot wide by 24 foot long finger piers,
An 8 foot wide by 54 foot long dock,
Twenty-seven (27) mooring pilings**

TO RE-NOURISH THE EXISTING BEACH BY PLACING:

1,580 square feet of clean coarse sand fill material

TO REPAIR:

158 linear feet of bulkhead by stepping out 8 inches in front of the existing bulkhead

**TO REMOVE ONE EXISTING TIMBER BULKHEAD GROIN AND REPAIR THE
OTHER BY REPLACEMENT WITH THE FOLLOWING:**

32 linear foot riprap groin

TO UTILIZE THE GRANDFATHERED STRUCTURES:

**A 6 foot wide by 28 foot long fixed pier
A 13 foot wide by 12 foot long dock
55 linear feet of riprap revetment**

PORTIONS OCCUPYING PUBLIC SUBAQUEOUS LANDS TOTALING:

5,248 square feet

Delaware's good nature depends on you!

LOCATED CHANNELWARD OF MEAN LOW WATER:

**In the Little Assawoman Bay,
The Overlook Community Marina,
At the terminus of Ashlyn Road,
Selbyville, Sussex County, Delaware**

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. 2018, to construct the above-referenced project in accordance with the approved plans for this Lease (9 sheets) as approved on _____ as authorized by Secretary's Order No. _____ and the application dated October 31, 2016 and received by the Department on November 7, 2016, with subsequent information received on December 2, 2016, February 15, 2017, March 30, 2017, April 3rd, 7th and 12th, 2017, July 24, 2017, September 8th and 11th, 2017.

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

WHEREAS, Bayville Communities, LLC, owner(s) of certain lands adjoining to the Little Assawoman Bay have applied for permission to occupy 5,248 square feet of those public lands to install the indicated structures for private use of the residents of The Overlook community; and

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 shall be continued for a period of ten (10) 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 ten-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.

NOW THEREFORE, this Lease is issued subject to the attached Subaqueous Lands Lease General Conditions and the following special 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. This approval is in accordance with the plans and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.

3. This Lease is granted for the purpose of creating a new twenty-five (25) slip marina, shoreline stabilization and beach nourishment as indicated on the approved plans. Any other use without prior approval shall constitute reason for this Lease being revoked.
4. The authorized area of structure over public subaqueous lands is 5,248 square feet, represented by the 8 foot wide by 28 foot long pier, the 13 foot wide by 12 foot long dock, the 8 foot wide by 42 foot long dock extension, the 6 foot wide by 188 foot long pier, ten (10) 4 foot wide by 24 foot long finger piers, the 8 foot wide by 54 foot long dock, twenty-seven (27) mooring pilings, 1,200 square feet of clean coarse sand fill material, 106 square feet of fill material for the bulkhead step-out replacement, 184 square feet of rip-rap for the riprap groin and 495 square feet for the existing riprap revetment constructed channelward of the mean low water line.
5. Of the total 5,248 square feet of structure constructed channelward of the mean low water line, the portion subject to annual Lease fees is 1,306 square feet. This amount is represented by the 1,200 square feet of clean coarse sand fill material authorized for beach re-nourishment and the 106 square feet of fill material for the bulkhead replacement by stepping-out for shoreline stabilization. In accordance with 68 Delaware Laws, Volume 1, Chapter 86, Section 14, the sand fill material is subject to a fee of \$.10/sqft/year and the bulkhead step-out is subject to a fee of \$1.00/sqft/year. During the ten year term of this Lease, the lessee shall agree to pay the State of Delaware the sum of \$226.00 per annum for a total of \$2,260 for the ten year lease term for the 1,306 square feet of fill on public subaqueous lands utilized for the above-referenced activity. The lessee shall be billed annually in September for this amount.
6. The existing riprap revetment, existing pier and existing dock are hereby grandfathered. The entire structure shall conform to the Department of the Army Permit number CENAP-OP-R-Delaware State General Permit 20 (SPGP-20) and the current guidelines in place by the Wetlands and Subaqueous Lands Section at the time of repair by replacement of the grandfathered structures.
7. The primary species of concern for this project area are Summer Flounder (*Paralichthys dentatus*), Horseshoe Crab (*Limulidae*), and Diamonback terrapin (*Malaclemys terrapin*). Reference the chart below for specific time-of-year restrictions (depicted in gray) when no activity is to take place.

	January	February	March	April	May	June	July	August	September	October	November	December
Summer Flounder			1st						30th			
Horseshoe Crab				15th				30th				
Diamond-back Terrapin					Mid		Mid					

8. The work authorized herein shall be completed in accordance with the terms and conditions of the associated Marina Permit No. MP-443/16 and Subaqueous Permit No. SP-443/16.
9. The work authorized by this lease is subject to the terms and conditions of the Department of the Army Permit number CENAP-OP-R-Delaware State General Permit 20 (SPGP-20) and the appropriate Department of the Army Nationwide Permits.
10. No portion of the decking on the pier, docks, and finger-piers authorized by this Permit shall exceed the width dimensions for that structure identified on Page One of this Permit.
11. There shall be no excavation channelward of the permitted alignment either before, during or after the installation of any of the authorized structures.
12. No portion of the authorized structures shall be constructed using creosote treated timber.
13. No permanent structure (building, house, patio, porch, deck, or other such structure) shall be constructed on a bulkhead or any portion of the anchoring system or any adjacent area that would interfere with future repair and/or replacement of the bulkhead.
14. 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.
15. Filter cloth shall be used behind the bulkhead to prevent the loss of soil into the waterway.
16. The bulkhead shall be constructed prior to the filling of any land contained by said structure.
17. This Permit does not authorize any future repairs below the water line, or any additions or modifications to the structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.
18. There shall be no movement of equipment within subaqueous lands and wetlands not specifically authorized by this Permit. Any areas disturbed pursuant to this authorization, other than the authorized permanent impact areas, shall be returned to pre-construction conditions/elevations and appropriately stabilized and/or vegetated. Disturbance of wetlands adjacent to the permitted construction by burning, cutting, herbicide treatments, mechanical methods or any other method is prohibited. There shall be no stockpiling of construction material in subaqueous lands or wetlands.

IN WITNESS WHEREOF, I, Thomas Natelli, the duly authorized representative of Bayville Communities, LLC, have caused this instrument to be executed on this _____ day of _____, 2018.

By: _____
Thomas Natelli
Bayville Communities, LLC (Lessee)

By
Sworn and Subscribed before me on
this ___ day of _____, 2018

(Notary Seal)

Notary

IN WITNESS WHEREOF, I, Shawn M. Garvin, Secretary of the Department of Natural Resources and Environmental Control, have hereunto set my hand this _____ day of _____, 2018.

Shawn M. Garvin, Secretary
Department of Natural Resources and Environmental Control



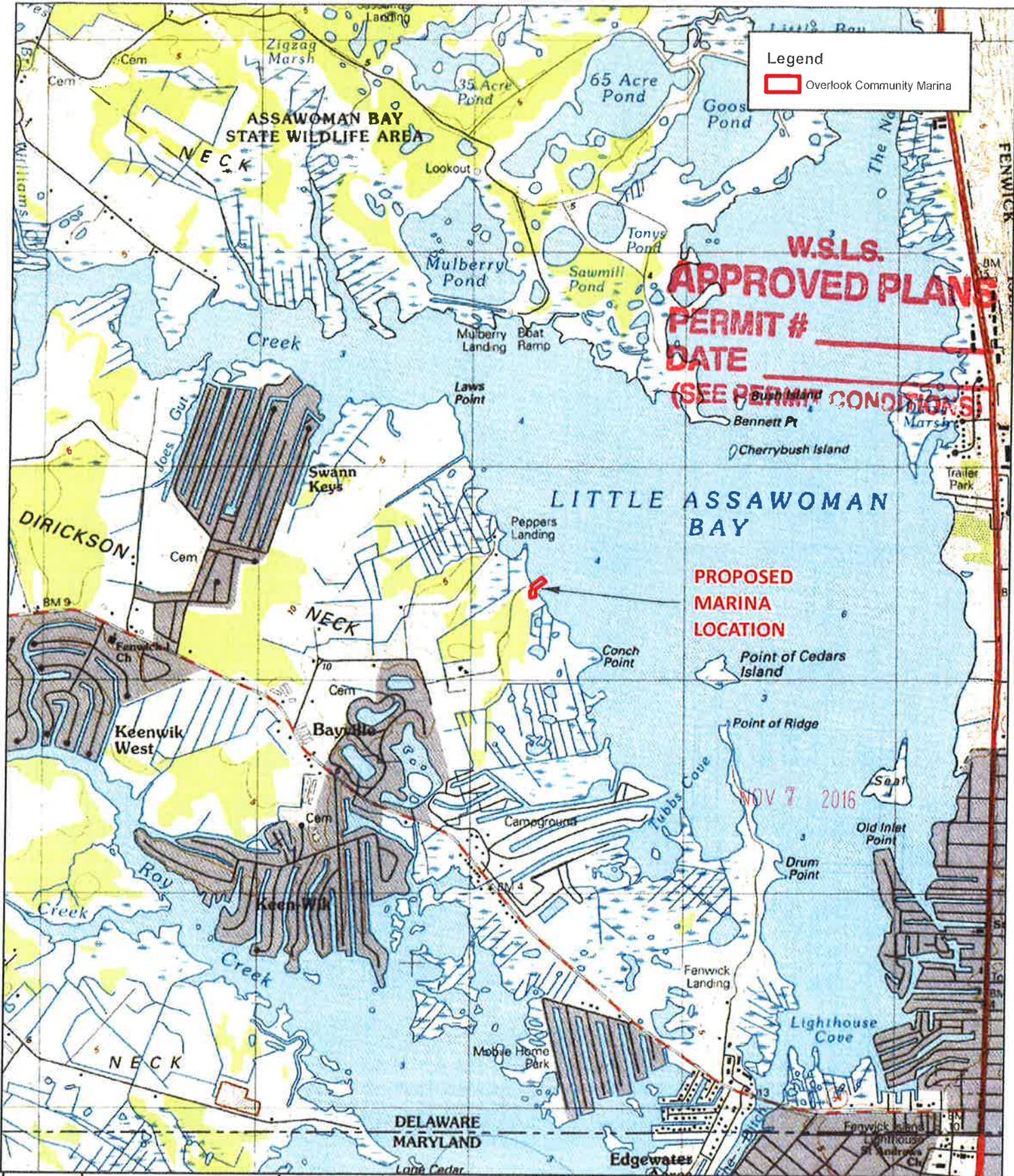
STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

GENERAL CONDITIONS

1. The lessee and contractor shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
2. 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.
3. A copy of this Lease and the stamped approved plans shall be available on-site during all phases of construction activity.
4. 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.
5. No portion of the structure shall be constructed using creosote treated lumber.
6. No portion of the structure(s) authorized by this Lease shall exceed the dimensions for that structure identified on Page One of this Lease.
7. The activities authorized herein shall be conducted so as not to violate the State of Delaware's Surface Water Quality Standards in effect at the date of Lease authorization.
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. The Contractors Completion Report shall be filled out and returned within 10 days of completion of the authorized work.
12. The lessee shall protect and hold the State of Delaware harmless from any loss, cost or damage resulting from the activities authorized herein.
13. 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.
14. The lessee shall maintain all authorized structures and activities in a good and safe condition.

Delaware's good nature depends on you!

15. 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.
16. 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.
17. No construction shall occur after the construction expiration date identified on Page One of this Lease. The lessee may file a 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.
18. 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.
19. Disturbance of subaqueous lands or wetlands adjacent to the authorized structures or activities is prohibited unless specifically addressed in the special conditions of this Lease. Disturbance of subaqueous lands or wetlands in the path of construction activities shall be minimized. Any temporarily impacted subaqueous lands or wetlands shall be returned to pre-disturbance elevations and conditions.
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. The lessee shall notify the Wetlands and Subaqueous Lands Section prior to the commencement of the work authorized by this Lease.
22. No portion of the structure shall be installed within ten (10) feet of the adjacent property lines.
23. No portion of the structure shall exceed 20% of the width of the water body as measured at mean low water.
24. The structures authorized by this Lease shall be constructed and maintained in a manner so as to assure water access to adjacent properties.
25. This Lease does not authorize any future repairs below the water line, or any additions or modifications to the structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.
26. 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.



Legend
 Overlook Community Marina

**W.S.L.S.
 APPROVED PLANS
 PERMIT # _____
 DATE _____
 (SEE PERMIT CONDITIONS)**

**PROPOSED
 MARINA
 LOCATION**

NOV 7 2016



1 inch = 2,000 feet
 0 500 1,000 2,000 Feet

USGS TOPOGRAPHIC MAP
 ASSAWOMAN BAY QUADRANGLE

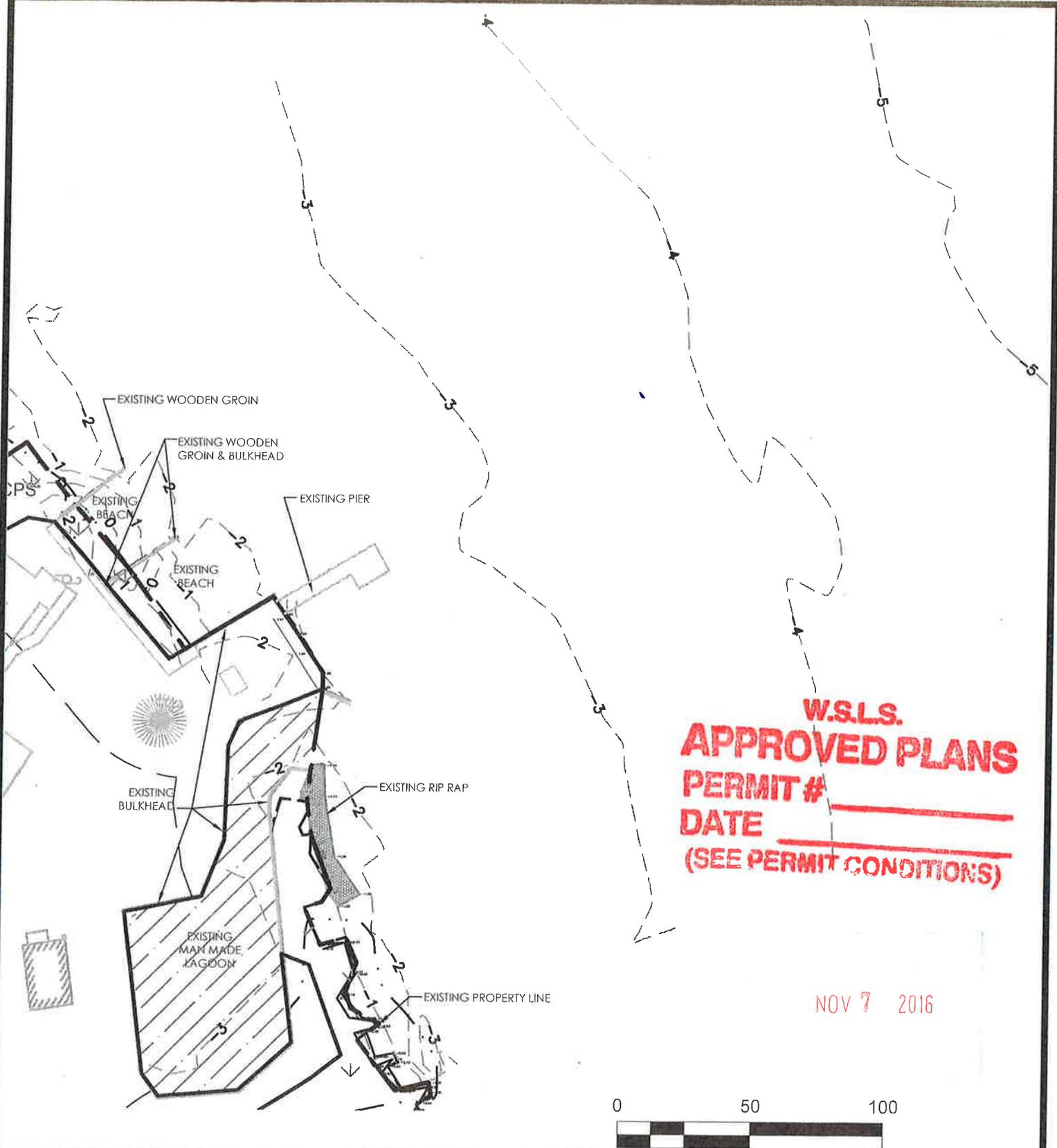
OVERLOOK COMMUNITY MARINA
 SELBYVILLE - UNINCORPORATED
 SUSSEX COUNTY, DELAWARE

ERI ENVIRONMENTAL
 RESOURCES, INC.

Date: 1/13/2015
 Revisions:

Dwn.By: JLW
 Proj.No.: N/A

SHEET:
1 of 10



W.S.L.S.
APPROVED PLANS
PERMIT # _____
DATE _____
(SEE PERMIT CONDITIONS)

NOV 7 2016

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OVERALL MARINA SITE - EXISTING CONDITIONS

THE OVERLOOK
 TAX MAP 5-33-13.00 PARCEL 140.00

Fuller Hall
 & ASSOCIATES, INC.
 A Wholly Owned Subsidiary

Drawn by: JES
 Job No.: 12015

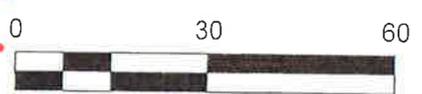
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

Scale: 1" = 50'	Date: 1/13/15	Sheet 2 of 10
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W.S.L.S.
APPROVED PLANS
PERMIT # _____
DATE _____
 (SEE PERMIT CONDITIONS)

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PROPOSED PIER CONNECTION AND SHORELINE PLAN

THE OVERLOOK

TAX MAP 5-33-13.00 PARCEL 140.00

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 & ASSOCIATES, INC.
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Drawn by: JES

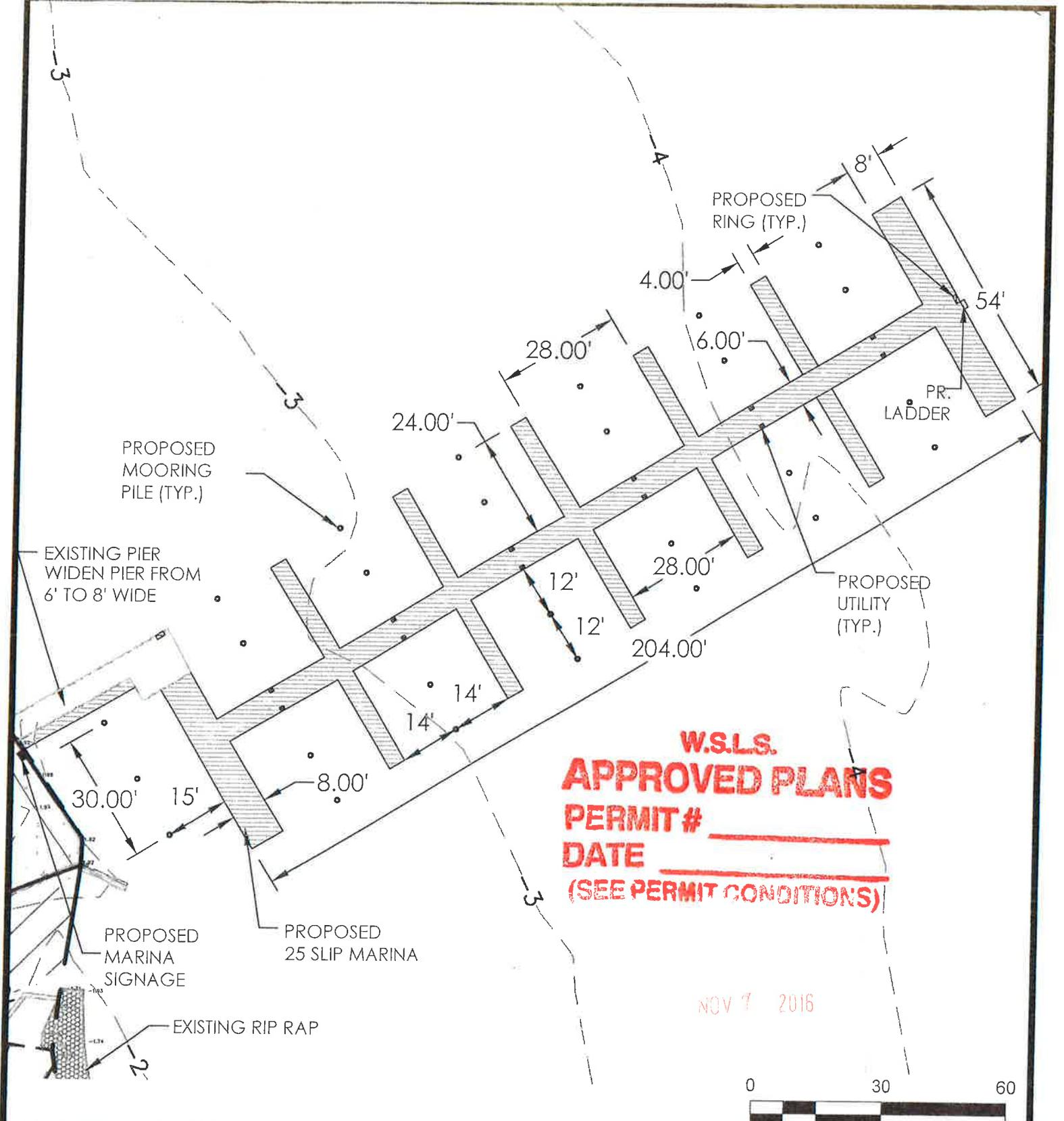
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

Job No.: 12015

Scale: 1" = 30'

Date: 1/13/15

Sheet 4 of 10



W.S.L.S.
APPROVED PLANS
PERMIT # _____
DATE _____
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MARINA PIER DETAIL PLAN

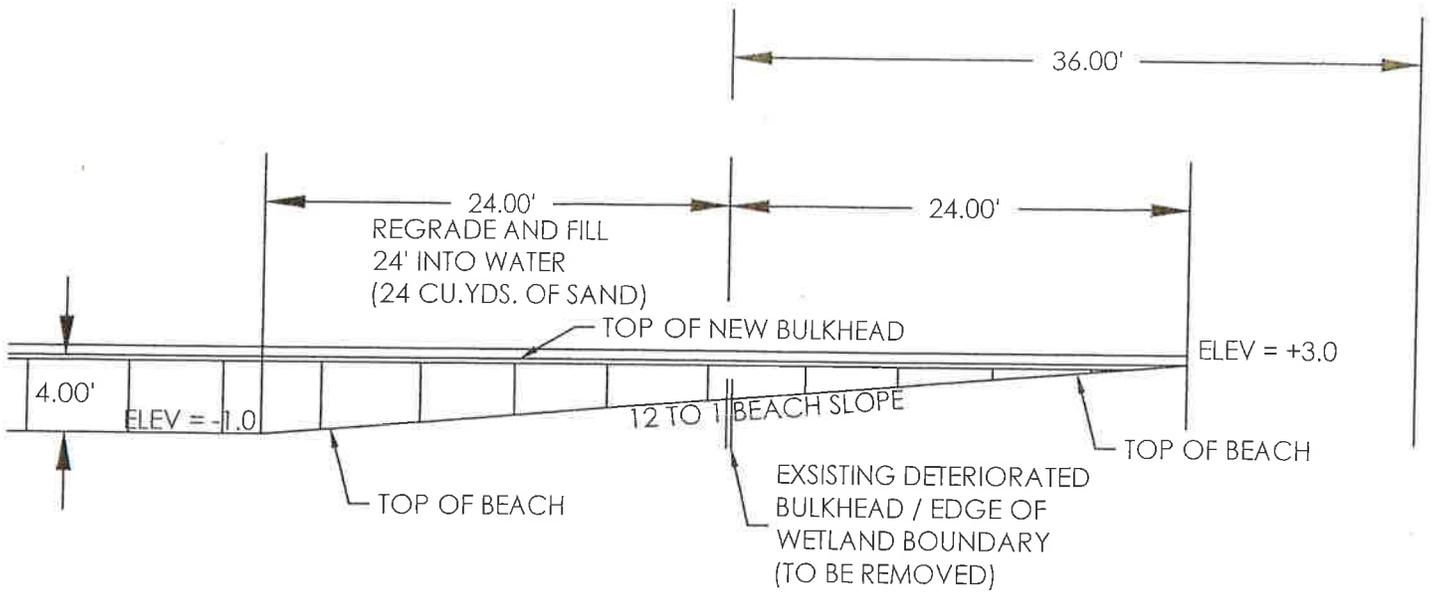
THE OVERLOOK
 TAX MAP 5-33-13.00 PARCEL 140.00

Fuller Hall
 & ASSOCIATES, INC.
 A Wholly Owned Subsidiary

Drawn by: JES
 Job No.: 12015

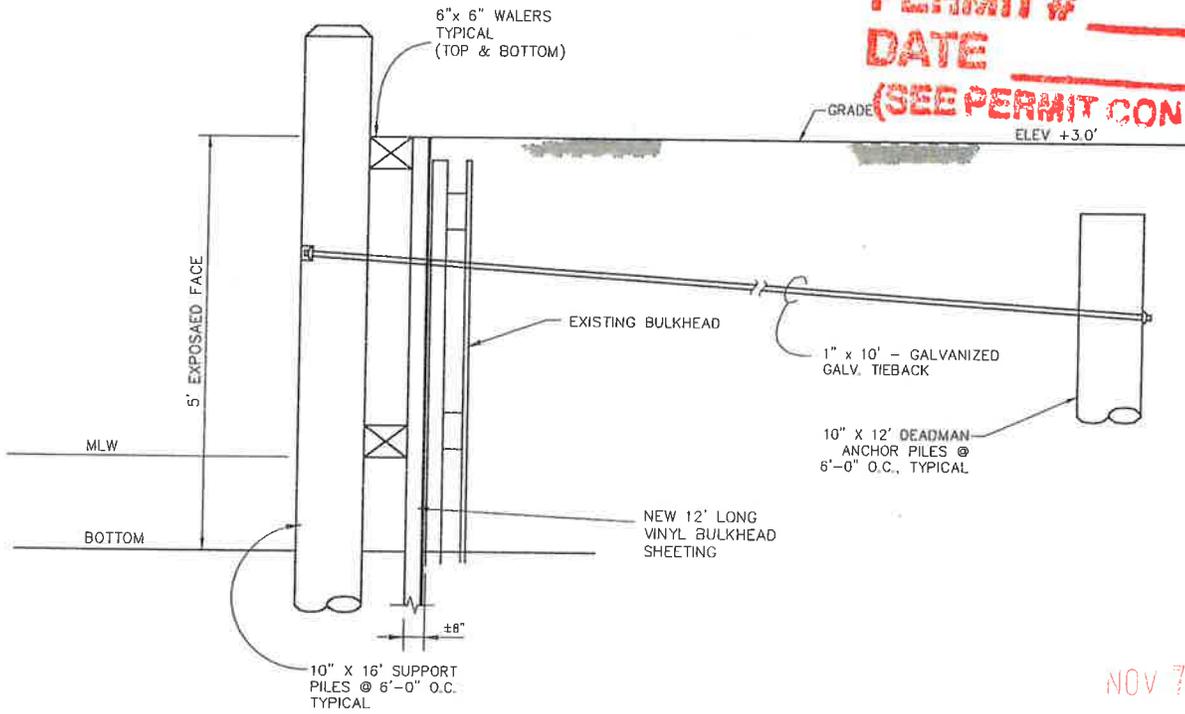
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

Scale: 1" = 30'	Date: 1/13/15	Sheet 5 of 10
-----------------	---------------	---------------



PROPOSED BEACH PROFILE
NO SCALE

W.S.L.S.
APPROVED PLANS
PERMIT # _____
DATE _____
(SEE PERMIT CONDITIONS)



TYPICAL SECTION THRU BULKHEAD REPLACEMENT
NO SCALE

NOTE AREA BETWEEN NEW BULKHEAD SHEETING AND EXISTING BULKHEAD SHEETING TO BE BACKFILLED

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PROPOSED BEACH PROFILE &
TYPICAL BULKHEAD REPLACEMENT DETAIL
THE OVERLOOK
TAX MAP 5-33-13.00 PARCEL 140.00

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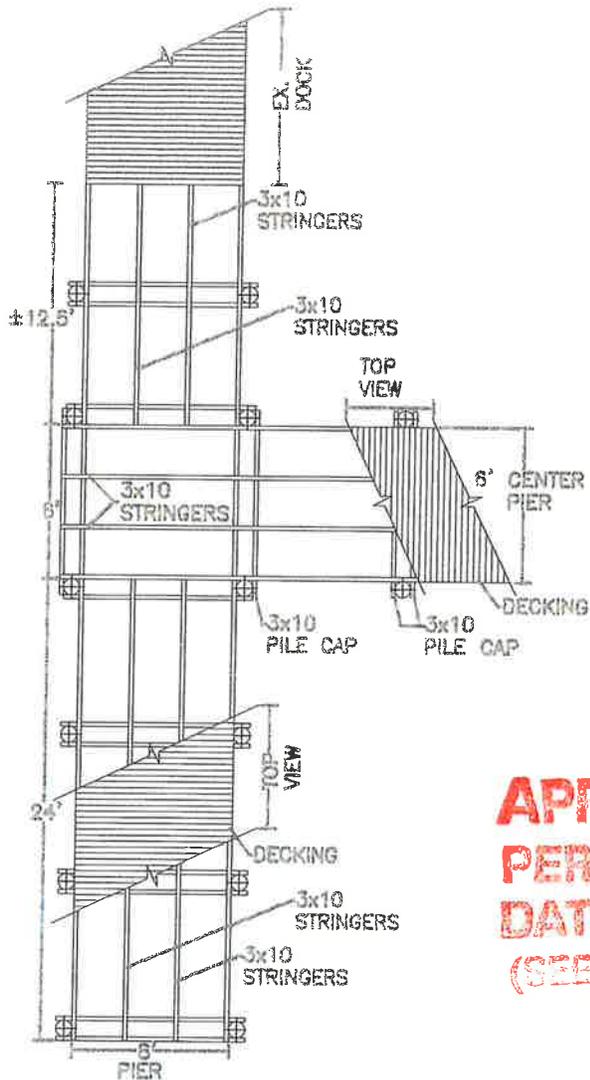
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

Job No.: 12015

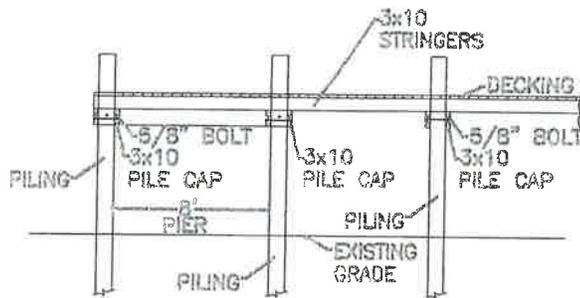
Scale: N.T.S.

Date: 1/13/15

Sheet 7 of 10



W.S.L.S.
APPROVED PLANS
PERMIT # _____
DATE _____
(SEE PERMIT CONDITIONS)



NOV 7 2016

CENTER PIER ELEVATION
 AT EXISTING DOCK
 & DECK FRAMING DETAIL

MARINA PIER DETAIL

THE OVERLOOK
 TAX MAP 5-33-13.00 PARCEL 140.00

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Scale: N.T.S.

Date: 1/13/15

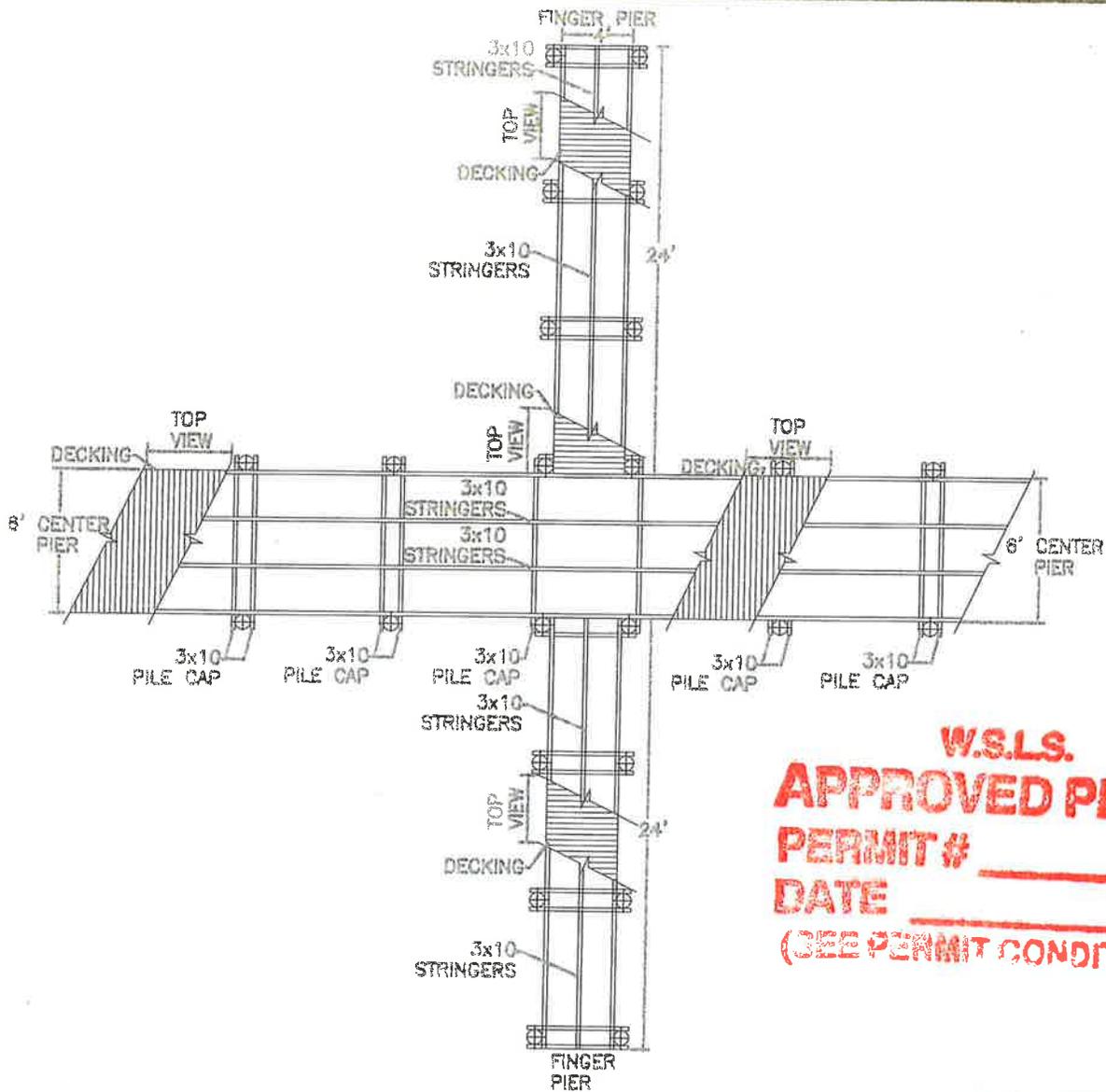
Sheet 8 of 10

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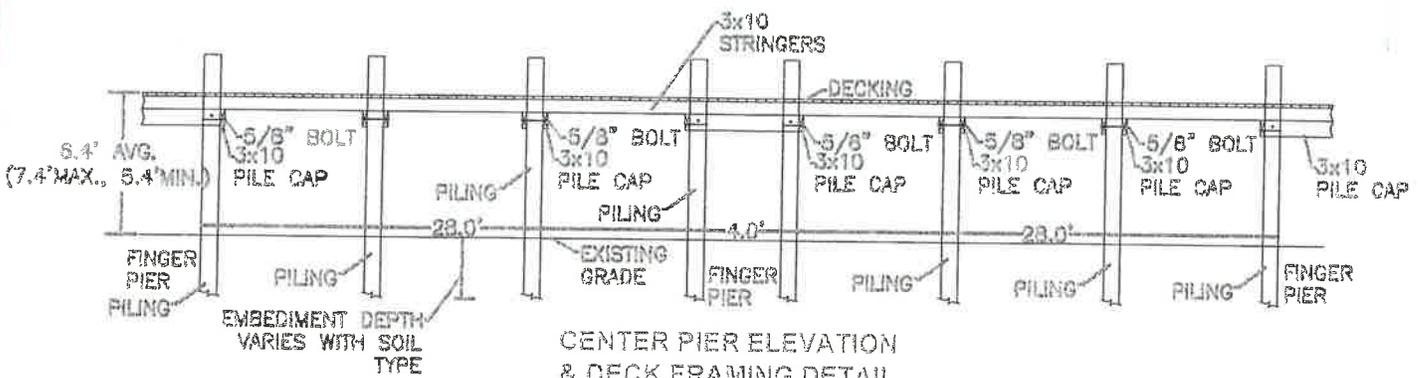
Fuller Hall

& ASSOCIATES, INC.
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W.S.L.S.
APPROVED PLANS
PERMIT # _____
DATE _____
(SEE PERMIT CONDITIONS)

NOV 7 2016



CENTER PIER ELEVATION & DECK FRAMING DETAIL

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THE OVERLOOK
 TAX MAP 5-33-13.00 PARCEL 140.00

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Drawn by: JES

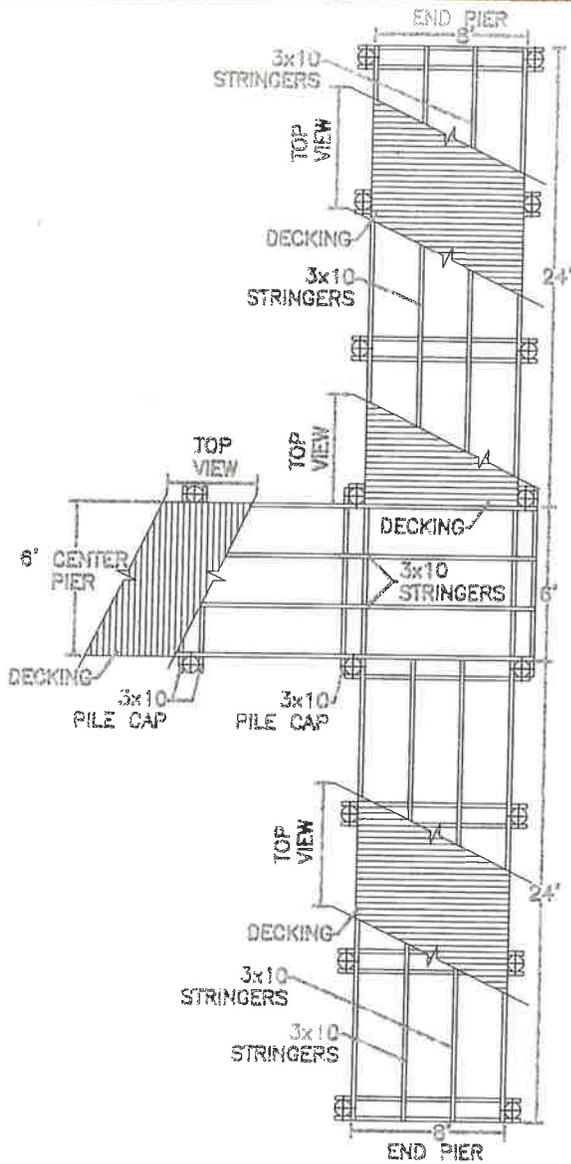
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

Job No.: 12015

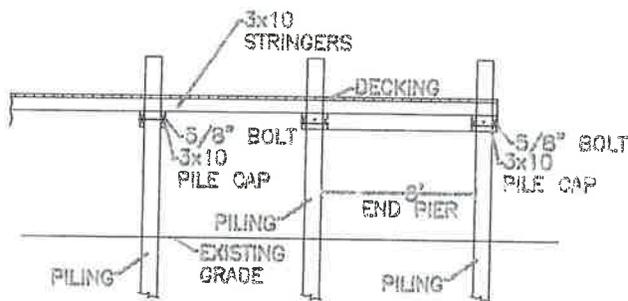
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Date: 1/13/15

Sheet 9 of 10



W.S.L.S.
APPROVED PLANS
PERMIT # _____
DATE _____
(SEE PERMIT CONDITIONS)



CENTER PIER ELEVATION
 AT END
 & DECK FRAMING DETAIL

NOV 7 2016

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MARINA PIER DETAIL

THE OVERLOOK
 TAX MAP 5-33-13.00 PARCEL 140.00

Drawn by: JES

BALTIMORE HUNDRED, SUSSEX COUNTY, DE

Job No.: 12015

Scale: N.T.S.

Date: 1/13/15

Sheet 10 of 10

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 & ASSOCIATES, INC.
 A Wholly Owned Subsidiary



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

WETLANDS & SUBAQUEOUS
LANDS SECTION

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

Bayville Communities, LLC
c/o Thomas Natelli
506 Main Street, Suite No. 3
Gaithersburg, MD 20878
Tax Parcel: 5-33-20.00-140.00

Subaqueous Lands Permit: SP-443/16
Associated Marina Permit(s): MP-443/16
Associated Lease(s): SL-443/16
Date of Issuance:
Construction Expiration Date:
Amended Date: N/A

SUBAQUEOUS LANDS PERMIT

GRANTED TO:

Bayville Communities, LLC

TO CONSTRUCT AND UTILIZE:

An 8 foot wide by 24 foot long floating dock

TO REPAIR THE EXISTING BULKHEAD BY INSTALLING:

**12 linear feet of the breakwater bulkhead by replacement in the same footprint as existing
292 linear feet of bulkhead by stepping out 8 inches in front of the existing bulkhead**

LOCATED ON PRIVATE SUBAQUEOUS LANDS:

**In an unnamed lagoon adjacent to the Little Assawoman Bay,
The Overlook Community Marina,
At the terminus of Ashlyn Road,
Selbyville, Sussex County, Delaware**

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. 2018, to construct the above-referenced project in accordance with the approved plans (5 sheets), as approved on _____ as authorized by Secretary's Order No. _____; and the application dated October 31, 2016 and received by the Department on November 7, 2016, with subsequent information received on December 2, 2016, February 15, 2017, March 30, 2017, April 3rd, 7th and 12th, 2017, July 24, 2017, September 8th and 11th, 2017.

WHEREAS, Bayville Communities, LLC, owner(s) of certain adjoining lands to the unnamed lagoon adjacent to the Little Assawoman Bay, has applied for permission to install the indicated structures for shoreline stabilization and private use for the residents of The Overlook community; 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.

NOW THEREFORE, this Permit is issued subject to the attached Subaqueous Lands Permit General Conditions and the following special conditions:

SPECIAL CONDITIONS

1. This Permit is granted for the purpose of shoreline stabilization and water access, as stated in the permit application. Any other use without prior approval shall constitute reason for this Permit being revoked.
2. This approval is in accordance with the plans and application submitted to the Department of Natural Resources and Environmental Control, a copy of which is attached hereto and made a part hereof.
3. The primary species of concern for this project area are Summer Flounder (*Paralichthys dentatus*), Horseshoe Crab (*Limulidae*), and Diamondback terrapin (*Malaclemys terrapin*). Reference the chart below for specific time-of-year restrictions (depicted in gray) when no activity is to take place.

	January	February	March	April	May	June	July	August	September	October	November	December
Summer Flounder			1st						30 th			
Horseshoe Crab				15 th				30 th				
Diamond-back Terrapin					Mid		Mid					

4. There shall be no motorized vessels moored within the lagoon. The 8 foot wide by 24 foot long floating dock in the lagoon shall only be used for non-motorized vessels.
5. The work authorized herein shall be completed in accordance with the terms and conditions of the associated Marina Permit No. MP-443/16.
6. No portion of the decking on the floating dock authorized by this Permit shall exceed the width dimensions for that structure identified on Page One of this Permit.
7. There shall be no excavation channelward of the permitted alignment either before, during or after the installation of any of the authorized structures.
8. No portion of the authorized structures shall be constructed using creosote treated timber.

9. No permanent structure (building, house, patio, porch, deck, or other such structure) shall be constructed on a bulkhead or any portion of the anchoring system or any adjacent area that would interfere with future repair and/or replacement of the bulkhead.
10. 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.
11. Filter cloth shall be used behind the bulkhead to prevent the loss of soil into the waterway.
12. The bulkhead shall be constructed prior to the filling of any land contained by said structure.
13. This Permit does not authorize any future repairs below the water line, or any additions or modifications to the structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.
14. There shall be no movement of equipment within subaqueous lands not specifically authorized by this Permit. Any areas disturbed outside the footprint of the authorized structure shall be returned to pre-construction conditions and elevations and appropriately stabilized.
15. The work authorized by this permit is subject to the terms and conditions of the appropriate Department of the Army Permit.

IN WITNESS WHEREOF, I, Steven M. Smailer, the duly authorized representative of Shawn M. Garvin, Secretary of the Department of Natural Resources and Environmental Control, have hereunto set my hand this _____ day of _____, 2018.

By Steven M. Smailer, Environmental Program Administrator
the duly authorized representative of the Secretary of the
Department of Natural Resources and Environmental Control

Julie R. Molina, Environmental Scientist
Wetlands and Subaqueous Lands Section



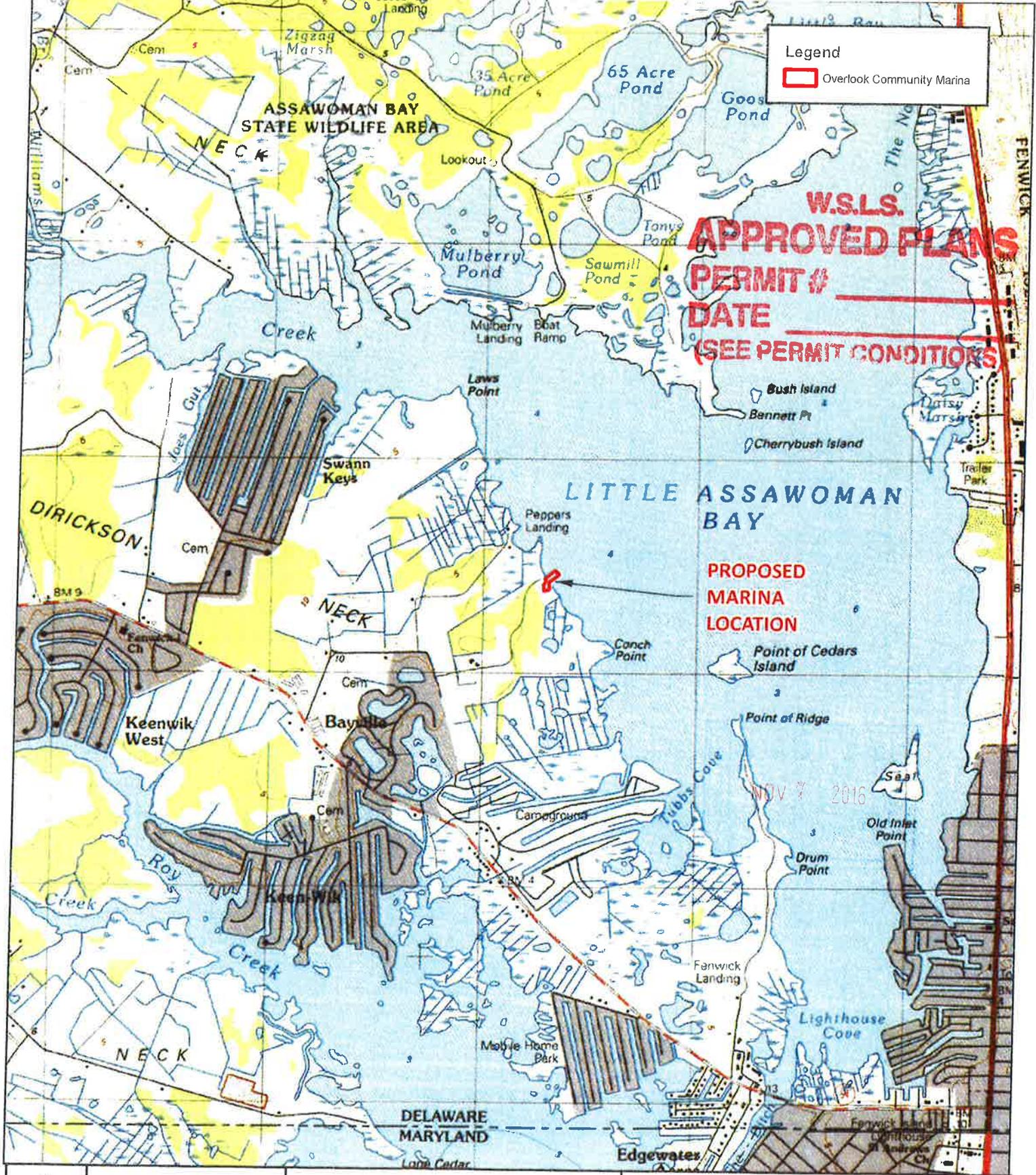
STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

GENERAL CONDITIONS

1. The permittee and contractor shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
2. 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.
3. A copy of this Permit and the stamped approved plans shall be available on-site during all phases of construction activity.
4. 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.
5. No portion of the structure shall be constructed using creosote treated lumber.
6. No portion of the structure(s) authorized by this Permit shall exceed the dimensions for that structure identified on Page One of this Permit.
7. The activities authorized herein shall be conducted so as not to violate the State of Delaware's Surface Water Quality Standards in effect at the date of Permit authorization.
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. The Contractors Completion Report shall be filled out and returned within 10 days of completion of the authorized work.
12. The permittee shall protect and hold the State of Delaware harmless from any loss, cost or damage resulting from the activities authorized herein.
13. 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.
14. The permittee shall maintain all authorized structures and activities in a good and safe condition.

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15. 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.
16. 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.
17. No construction shall occur after the construction expiration date identified on Page One of this Permit. The permittee may file a 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.
18. 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.
19. Disturbance of subaqueous lands or wetlands adjacent to the authorized structures or activities is prohibited unless specifically addressed in the special conditions of this Permit. Disturbance of subaqueous lands or wetlands in the path of construction activities shall be minimized. Any temporarily impacted subaqueous lands or wetlands shall be returned to pre-disturbance elevations and conditions.
20. This Permit 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 permittee shall obtain the written consent of the Department to transfer the Permit to the new upland property owner. Failure to obtain such written consent may result in the revocation of this Permit and the removal of all structures authorized by this Permit at the expense of the permittee.
21. The permittee shall notify the Wetlands and Subaqueous Lands Section prior to the commencement of the work authorized by this Permit.
22. No portion of the structure shall be installed within ten (10) feet of the adjacent property lines.
23. No portion of the structure shall exceed 20% of the width of the water body as measured at mean low water.
24. The structures authorized by this Permit shall be constructed and maintained in a manner so as to assure water access to adjacent properties.
25. This Permit does not authorize any future repairs below the water line, or any additions or modifications to the structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.
26. 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.



Legend
 Overlook Community Marina

W.S.L.S.
APPROVED PLANS
PERMIT # _____
DATE _____
(SEE PERMIT CONDITIONS)

**PROPOSED
MARINA
LOCATION**

NOV 7 2016



1 inch = 2,000 feet
 0 500 1,000 2,000 Feet

USGS TOPOGRAPHIC MAP
 ASSAWOMAN BAY QUADRANGLE

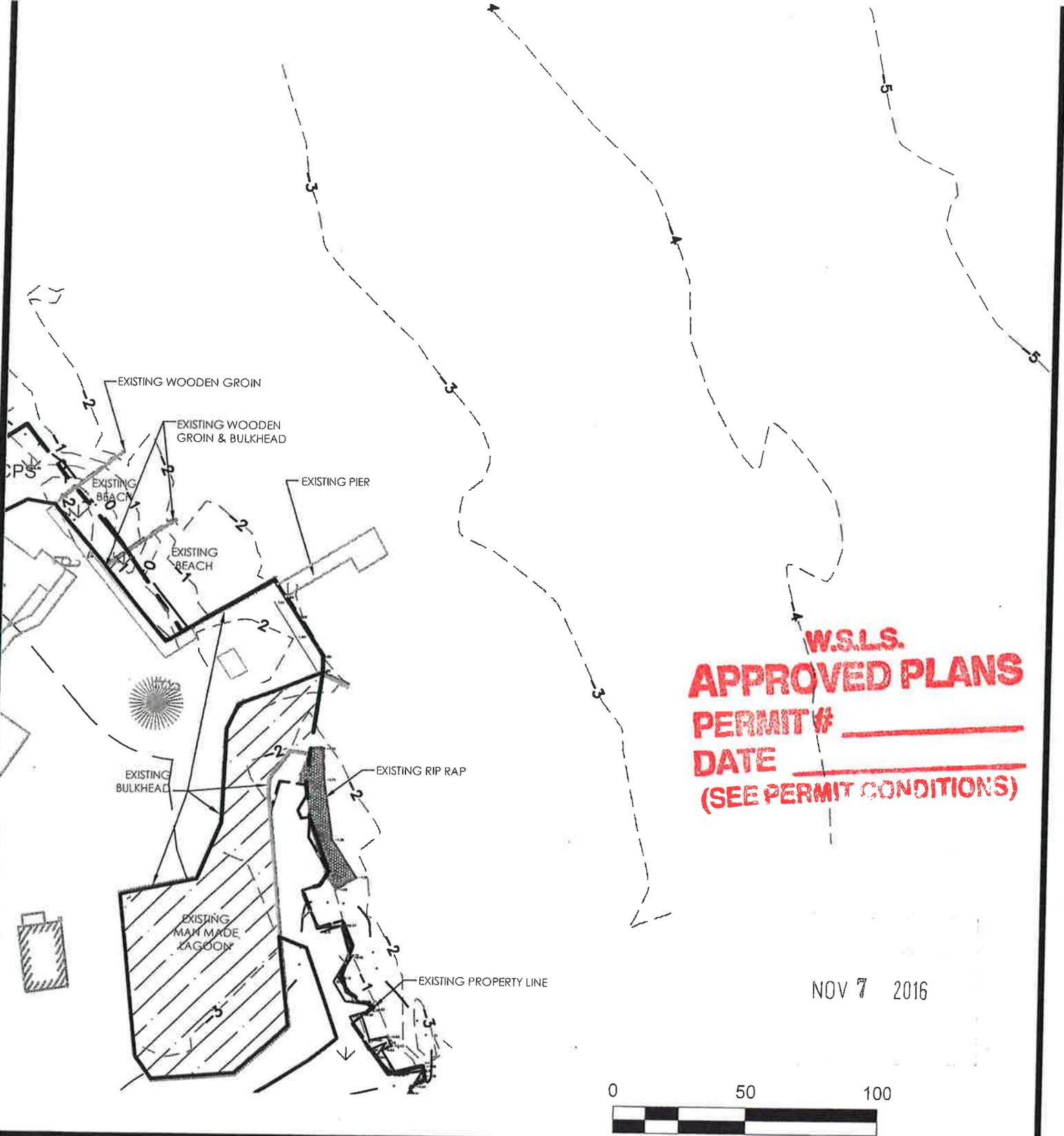
OVERLOOK COMMUNITY MARINA
 SELBYVILLE - UNINCORPORATED
 SUSSEX COUNTY, DELAWARE

ERI ENVIRONMENTAL
 RESOURCES, INC.

Date: 1/13/2015
 Revisions:

Dwn.By: JLW
 Proj.No.: N/A

SHEET:
1 of 10



W.S.L.S.
APPROVED PLANS
PERMIT # _____
DATE _____
(SEE PERMIT CONDITIONS)

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OVERALL MARINA SITE - EXISTING CONDITIONS

THE OVERLOOK
 TAX MAP 5-33-13.00 PARCEL 140.00

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 & ASSOCIATES, INC.
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Drawn by: JES

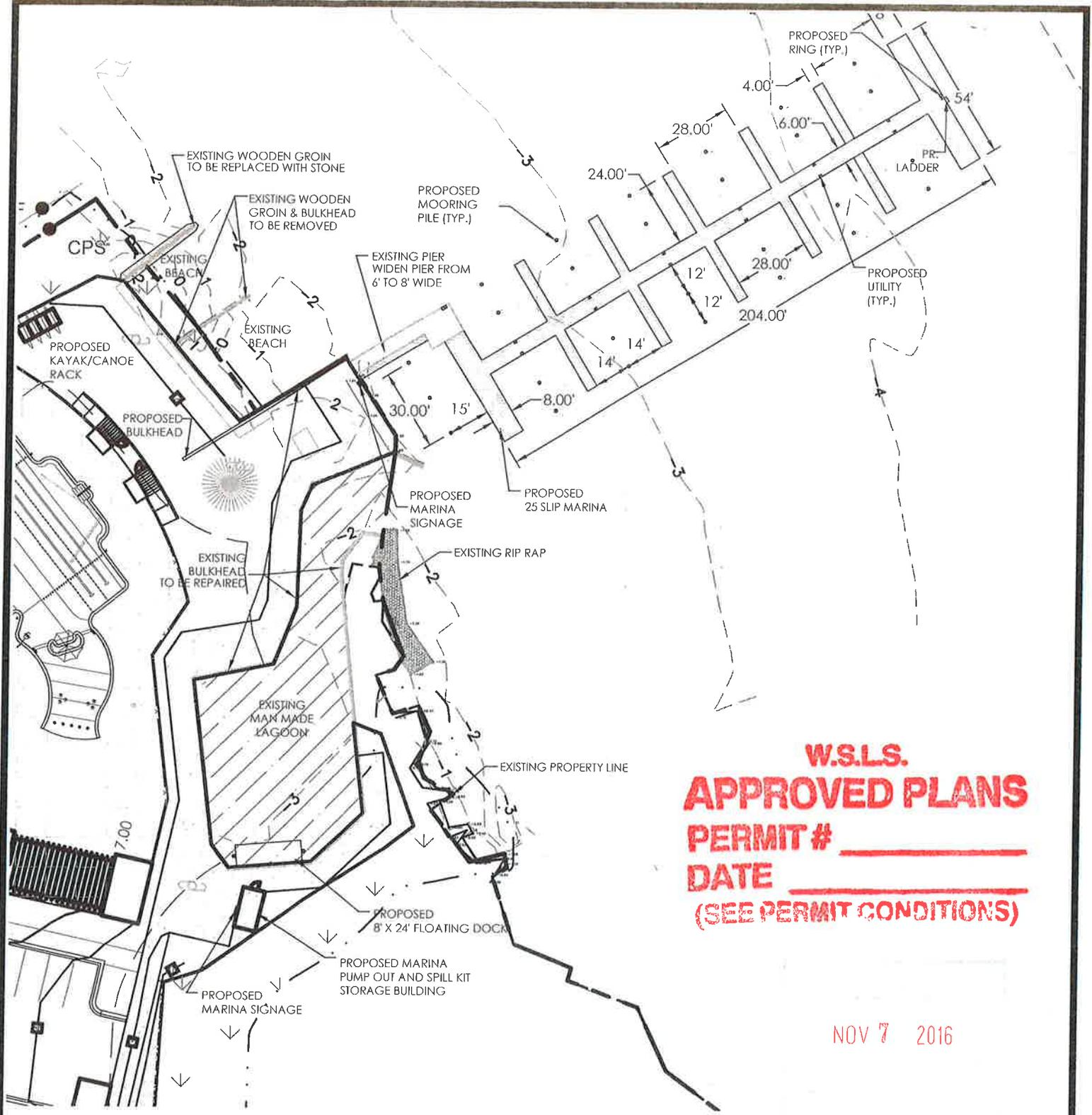
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

Job No.: 12015

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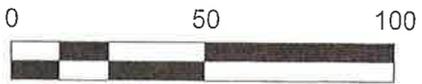
Date: 1/13/15

Sheet 2 of 10



W.S.L.S.
APPROVED PLANS
PERMIT # _____
DATE _____
(SEE PERMIT CONDITIONS)

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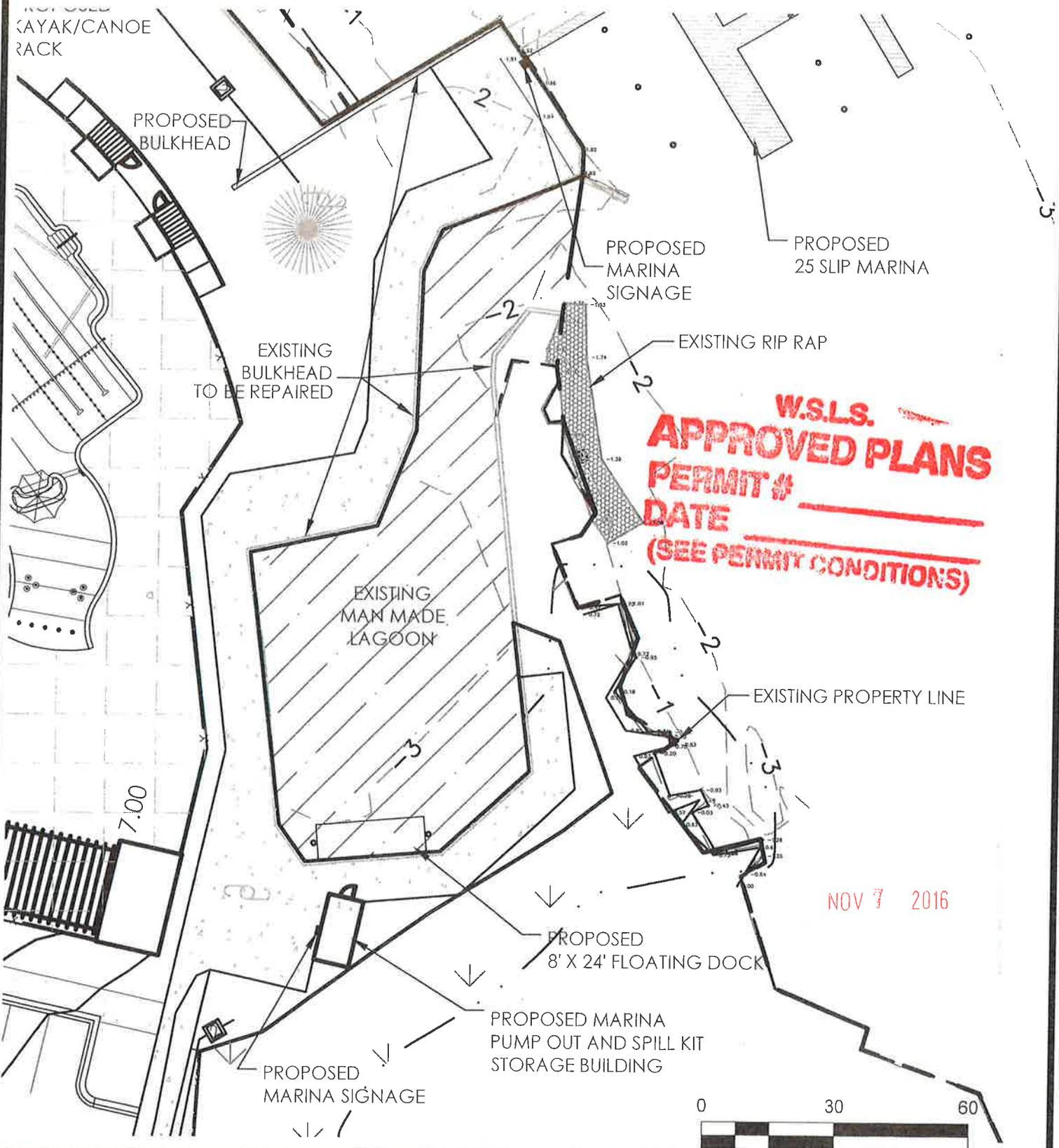
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THE OVERLOOK
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 Scale: 1" = 50'
 Date: 1/13/15
 Sheet 3 of 10



W.S.L.S.
APPROVED PLANS
PERMIT # _____
DATE _____
(SEE PERMIT CONDITIONS)

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EXISTING MAN MADE LAGOON IMPROVEMENTS PLAN

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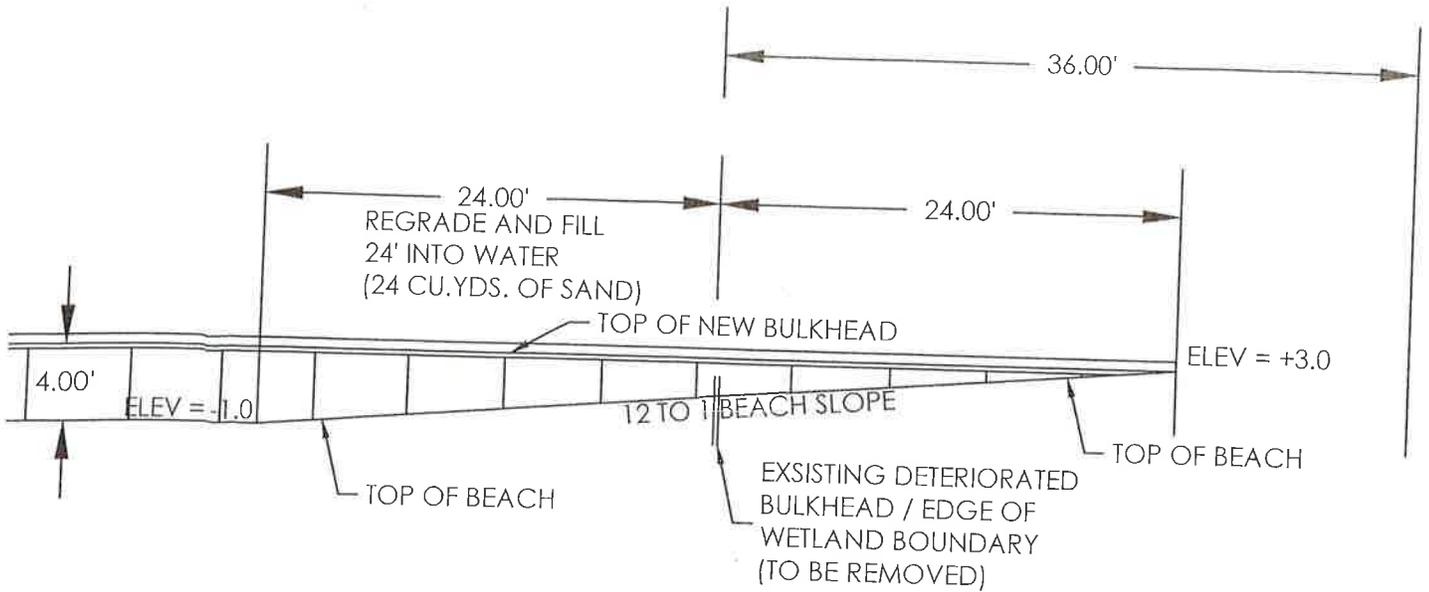
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BALTIMORE HUNDRED, SUSSEX COUNTY, DE

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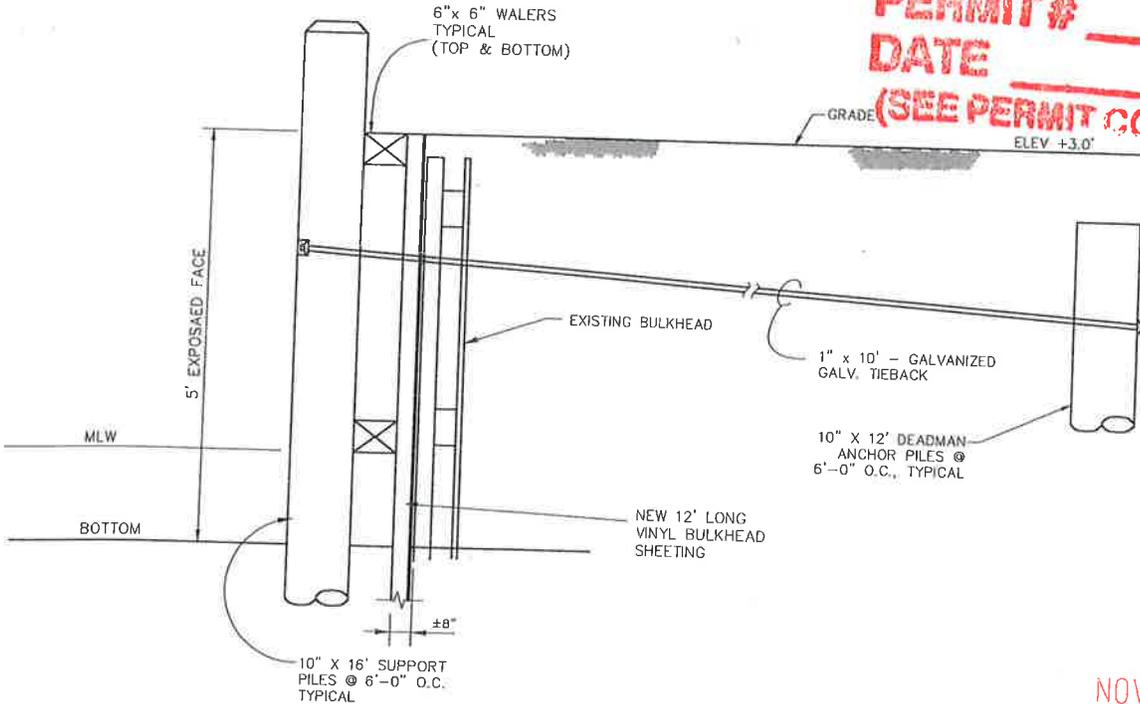
Date: 1/13/15

Sheet 6 of 10



PROPOSED BEACH PROFILE
NO SCALE

W.S.L.S.
APPROVED PLANS
PERMIT # _____
DATE _____
(SEE PERMIT CONDITIONS)



TYPICAL SECTION THRU BULKHEAD REPLACEMENT
NO SCALE

NOTE: AREA BETWEEN NEW BULKHEAD SHEETING AND EXISTING BULKHEAD SHEETING TO BE BACKFILLED.

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PROPOSED BEACH PROFILE &
TYPICAL BULKHEAD REPLACEMENT DETAIL
THE OVERLOOK
TAX MAP 5-33-13.00 PARCEL 140.00

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Drawn by: JES
Job No.: 12015

Scale: N.T.S.

Date: 1/13/15

Sheet 7 of 10

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

WETLANDS & SUBAQUEOUS
LANDS SECTION

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

Bayville Communities, LLC
c/o Thomas Natelli
506 Main Street, Suite No. 3
Gaithersburg, MD 20878
Tax Parcel: 5-33-20.00-140.00

Marina Permit: MP-443/16
Associated Permit(s): SP-443/16
Associated Lease(s): SL-443/16
Associated O&M Plan: OM-443/16
Date of Issuance:
Amended Date: N/A

MARINA PERMIT

GRANTED TO:

Bayville Communities, LLC

TO OPERATE A TWENTY-FIVE (25) SLIP MARINA WITH THE FOLLOWING STRUCTURES:

**A grandfathered 8 foot wide by 28 foot long pier,
A grandfathered 13 foot wide by 12 foot long dock,
An 8 foot wide by 42 foot long dock extension,
A 6 foot wide by 188 foot long pier,
Ten (10) 4 foot wide by 24 foot long finger piers,
An 8 foot wide by 54 foot long dock,
Twenty-seven (27) mooring pilings,
An 8 foot wide by 24 foot long floating dock**

LOCATED:

**In the Little Assawoman Bay and an adjacent lagoon,
The Overlook Community Marina,
At the terminus of Ashlyn Road,
Selbyville, Sussex County, Delaware**

Pursuant to the provisions of 7 Del. C., Chapter 72, the Subaqueous Lands Act and the "Delaware Marina Regulations" and "Regulations Governing the Use of Subaqueous Lands" permission is hereby granted on this _____ day of _____ A.D. 2018, to operate the above-referenced marina in accordance with the approved plans (10 sheets) as approved on _____ as authorized by Secretary's Order No. _____, and the application dated October 31, 2016 and received by the Department on November 7, 2016, with subsequent

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information received on December 2, 2016, February 15, 2017, March 30, 2017, April 3rd, 7th and 12th, 2017, July 24, 2017, September 8th and 11th, 2017.

WHEREAS, Bayville Communities, LLC, owner(s) of certain adjoining lands to the Little Assawoman Bay and an adjacent lagoon, has applied for permission to utilize the indicated structures for private use for the residents of The Overlook community; and;

WHEREAS, pursuant to the provisions of 7 Del. C., , Chapter 72, the Subaqueous Lands Act, and the “Delaware Marina Regulations” and “Regulations Governing the Use of Subaqueous Lands”, 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.

NOW THEREFORE, this Permit is issued subject to the attached Subaqueous Permit General Conditions and the following Management Requirements and Special Conditions:

A. MANAGEMENT REQUIREMENTS

1. Changes of Permit Terms or Conditions

A report must be submitted to the Department describing any anticipated marina facility changes or expansions that would require modification of the terms and conditions of this Permit. The Department must approve changes prior to implementation.

2. Noncompliance Notification

In the case of noncompliance with State regulations and Permit conditions, the permittee shall report to the Department:

Orally **within twenty-four (24) hours** from the time the permittee became 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 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.

3. Facilities Operation

The permittee 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. The facility shall be operated in accordance with the approved Marina's Operations and Maintenance Plan (O&M Plan). The approved O&M Plan shall be distributed to all marina tenants (and full time slip renters) and shall be posted in the harbormaster's office or other prominent place within the marina.

4. Pre-Operation Notification:

The permittee shall notify the Department, in writing, **at least fifteen (15) working days prior** to the date that the marina becomes 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 Page 2 of this Permit. Based upon the results of the pre-startup inspection, the Department will either:

- i. Grant written approval of the marina facility as constructed, so that marina operations can commence, or
- ii. 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.

5. Vessel Sewage Discharge:

Any marina providing other than transient berthing for any vessel containing a Type III marine sanitation device shall provide convenient access to an approved, fully operable and well maintained pumpout facility to receive wastes from vessel holding tanks or portable marine toilets (porta-potties).

The marina shall place signs, clearly visible to resident and transient vessels, to indicate the location and availability of the pumpout station and shall not preclude the use of the pumpout station by transient vessels. If the marina is not required to provide a pumpout facility, signage shall be posted to identify the location of the nearest facility.

The O&M Plan shall include the following information regarding vessel sewage in the boater rules and regulations section:

- i. 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 waters of the State is prohibited;
- ii. All vessels while on waters of the State shall comply with 33 U.S.C. §1322, Marine Sanitation Devices, as amended February 4, 1987.

6. Vessel Maintenance

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 washing, polishing and limited inboard painting 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. 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. Failure to properly handle vessel maintenance material or wastes may result in the revocation of this Permit.

7. Reporting a Discharge

Any person who causes or contributes to the discharge of a pollutant into State waters (particularly any oil or fuel spills), whether in excess of any conditions specified in this Permit or in the absence of a specific permit condition, shall report such an incident to the Department as required under 7 Del. C., §6028.

8. Adverse Impact

The permittee shall take all reasonable steps to minimize any adverse impact to the surface or ground waters of the State resulting from the activities regulated by this Permit. Additional or accelerated monitoring may be required if the potential for adverse impact is noted.

9. Right of Entry

The permittee shall allow the Secretary of the Department of Natural Resources and Environmental Control, or his authorized representatives, upon presentation of credentials, to:

- i. Enter upon the permittee's premises for inspection of any construction activities, run-off control devices, monitoring methods or equipment required in this Permit, or other structures or facilities necessary for compliance with the terms and conditions of this Permit, or to sample any discharge of pollutants; and
- ii. Have access to any records required to be kept under the terms and conditions of this Permit, for inspection and/or copying.

10. Transferability

This Permit may not be transferred without the prior written consent of the Department. Prior to the transfer of the property, the permittee shall obtain the written consent of the Department to transfer this Permit to the new property owner. Failure to obtain such written consent may result in the revocation of this Permit which would require the removal of all structures authorized by this Permit at the expense of the permittee.

This Permit may be transferable upon Department review and approval of the stated intentions, provided that a letter explaining the intention to transfer, accompanied by a copy of the Permit, is provided to the Department and signed by both the transferor and the transferee at least ten (10) days prior to the actual transfer. A new, updated Operations and Maintenance Plan must be submitted for Department review and approval whenever the marina ownership changes.

11. Information Requirements

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.

12. Permit Modification, Suspension or Revocation

This Permit may be modified, suspended or revoked in whole or in part during its term for cause including, but not limited to, the following:

- i. Violation of any terms or conditions of this Permit;
- ii. Obtaining this Permit by misrepresentation or failure to disclose fully all relevant facts, or if information and data provided by the applicant in good faith proves to be false;
- iii. Information that the permitted activity poses a threat to human health or welfare;
- iv. Failure by the permittee to obtain all other applicable Federal, State or local permits or approvals which may be required or failure to comply with such permits or approvals.

13. Liability Clause

Nothing in this Permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under any State law or regulation.

14. Property Rights

The issuance of this Permit does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

15. Severability

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.

B. SPECIAL CONDITIONS

1. Purpose:

This Marina Permit approval is granted for the explicit purpose of operating a twenty-five (25) slip marina for the residents of The Overlook community, as indicated on the approved plans. Any other use without prior approval shall constitute reason for this Permit being revoked.

2. Associated Authorizations:

The Marina shall be constructed and operated in accordance with the terms and conditions of the following associated authorizations: Subaqueous Lands Lease No. SL-443/16; Subaqueous Permit No. SP-443/16 and Operations & Maintenance Plan No. OM-443/16.

The Marina Permit shall not be considered valid until the associated Subaqueous Lands Lease SL-443/16 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.

3. Approved Plans:

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

4. Vessel Mooring Locations:

Vessels may only be moored at the designated slips on the approved plans. There shall be no motorized vessels moored within the lagoon.

5. Floating Dock:

The 8 foot wide by 24 foot long floating dock in the lagoon shall only be used for non-motorized vessels.

6. Grandfathered structures:

The existing pier and existing dock are hereby grandfathered. The entire structure shall conform to Department of the Army Permit Number CENAP-OP-R-Delaware State General Permit 20 (SPGP-20) and the current guidelines in place by the Wetlands and Subaqueous Lands Section at the time of repair by replacement of the grandfathered structures.

7. Marina Expansion:

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.

8. Operations and Maintenance Plan

The marina shall be operated and maintained in accordance with the approved Marina Operations and Maintenance Plan OM-443/16 as revised on June 27, 2017 and approved on _____. The permittee shall submit an updated Operations & Maintenance Plan for periodic review and re-approval to the Wetlands and Subaqueous Lands Section every 4 years thereafter. Failure to maintain an approved Operations & Maintenance Plan shall constitute reason for this Marina Permit being revoked.

9. Vessel Sewage Discharge:

The permittee shall install and maintain a marine pumpout station for proper disposal of vessel sewage for users of the marina.

The permittee shall place signs to indicate the location of the pumpout station. Such signs shall fully explain the procedures and rules for usage of the pumpout station.

10. Dimensions of Decking:

No portion of the decking on the piers and docks authorized by this Permit shall exceed the width dimensions for those structures identified on the dimension plan of this Permit.

11. Corps of Engineers Permit:

The work authorized by this Permit is subject to the terms and conditions of the applicable Department of the Army Permit.

IN WITNESS WHEREOF, I, Steven M. Smailer, the duly authorized representative of Shawn M. Garvin, Secretary of the Department of Natural Resources and Environmental Control, have hereunto set my hand this _____ day of _____, 2018.

By Steven M. Smailer, Environmental Program Administrator
the duly authorized representative of the Secretary of the
Department of Natural Resources and Environmental Control

Julie R. Molina, Environmental Scientist
Wetlands and Subaqueous Lands Section



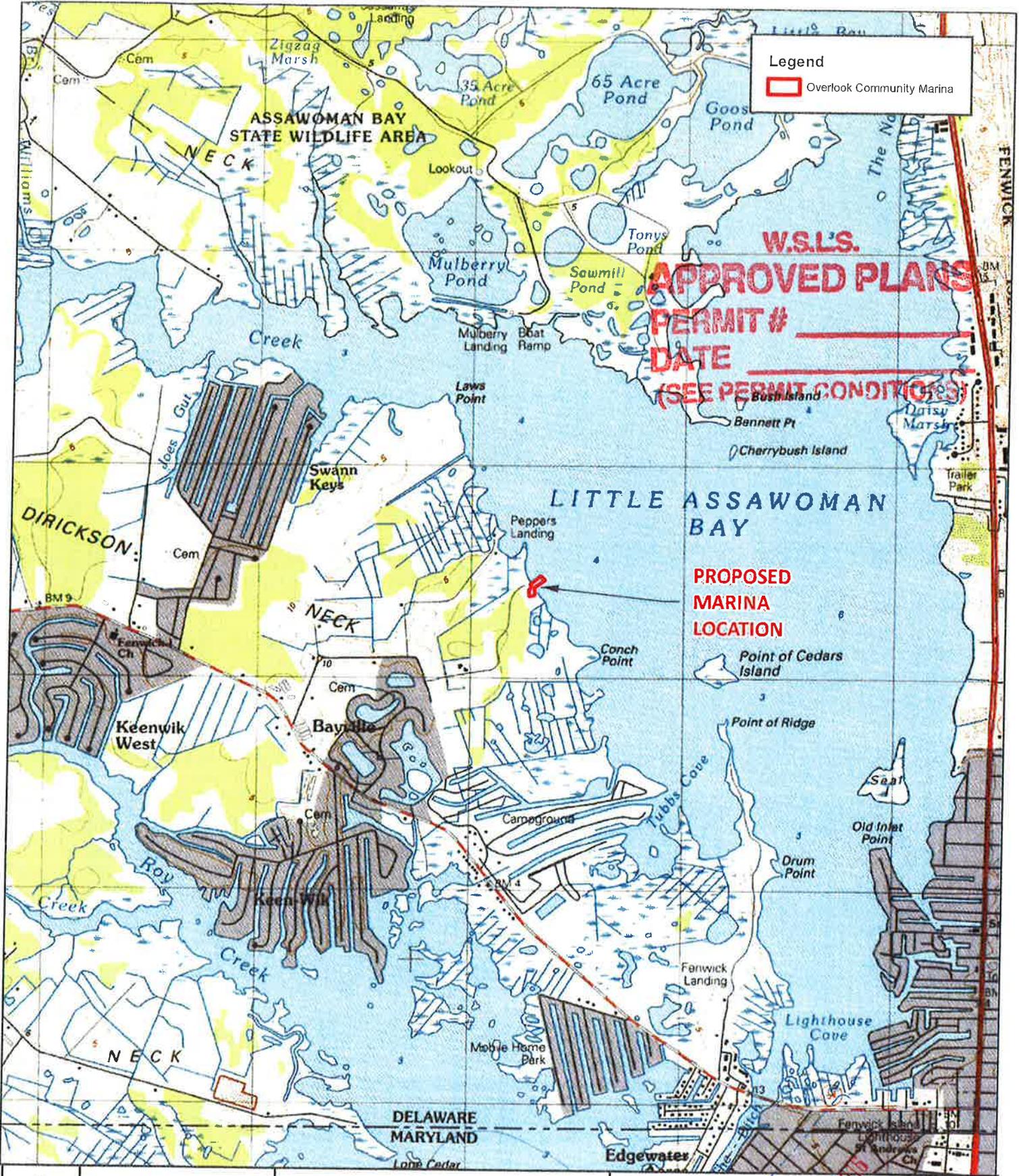
STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

GENERAL CONDITIONS

1. The permittee and contractor shall at all times comply with all applicable laws and regulations of the Department of Natural Resources and Environmental Control.
2. 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.
3. A copy of this Permit and the stamped approved plans shall be available on-site during all phases of construction activity.
4. 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.
5. No portion of the structure shall be constructed using creosote treated lumber.
6. No portion of the structure(s) authorized by this Permit shall exceed the dimensions for that structure identified on Page One of this Permit.
7. The activities authorized herein shall be conducted so as not to violate the State of Delaware's Surface Water Quality Standards in effect at the date of Permit authorization.
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. The Contractors Completion Report shall be filled out and returned within 10 days of completion of the authorized work.
12. The permittee shall protect and hold the State of Delaware harmless from any loss, cost or damage resulting from the activities authorized herein.
13. 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.
14. The permittee shall maintain all authorized structures and activities in a good and safe condition.

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15. 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.
16. 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.
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19. Disturbance of subaqueous lands or wetlands adjacent to the authorized structures or activities is prohibited unless specifically addressed in the special conditions of this Permit. Disturbance of subaqueous lands or wetlands in the path of construction activities shall be minimized. Any temporarily impacted subaqueous lands or wetlands shall be returned to pre-disturbance elevations and conditions.
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22. No portion of the structure shall be installed within ten (10) feet of the adjacent property lines.
23. No portion of the structure shall exceed 20% of the width of the water body as measured at mean low water.
24. The structures authorized by this Permit shall be constructed and maintained in a manner so as to assure water access to adjacent properties.
25. This Permit does not authorize any future repairs below the water line, or any additions or modifications to the structures authorized herein. Such activities require separate written authorization from the Department of Natural Resources and Environmental Control.
26. 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.



Legend
 Overlook Community Marina

W.S.L.S.
APPROVED PLANS
PERMIT # _____
DATE _____
(SEE PERMIT CONDITIONS)

**PROPOSED
 MARINA
 LOCATION**



1 inch = 2,000 feet
 0 500 1,000 2,000 Feet

USGS TOPOGRAPHIC MAP
 ASSAWOMAN BAY QUADRANGLE

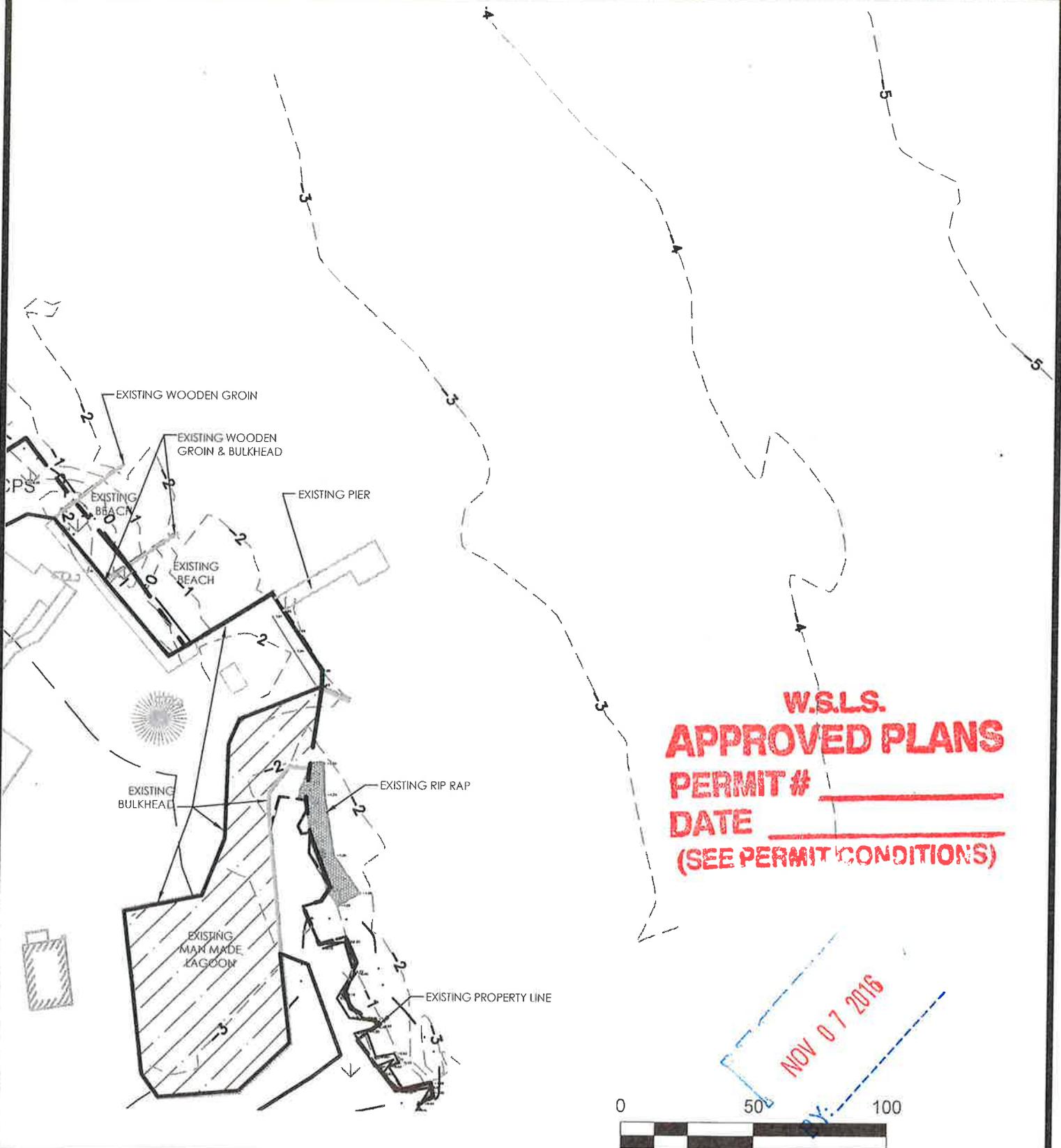
OVERLOOK COMMUNITY MARINA
 SELBYVILLE - UNINCORPORATED
 SUSSEX COUNTY, DELAWARE

ERI ENVIRONMENTAL
 RESOURCES, INC.

Date: 1/13/2015
 Revisions:

Dwn.By: JLW
 Proj.No.: N/A

SHEET:
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OVERALL MARINA SITE - EXISTING CONDITIONS

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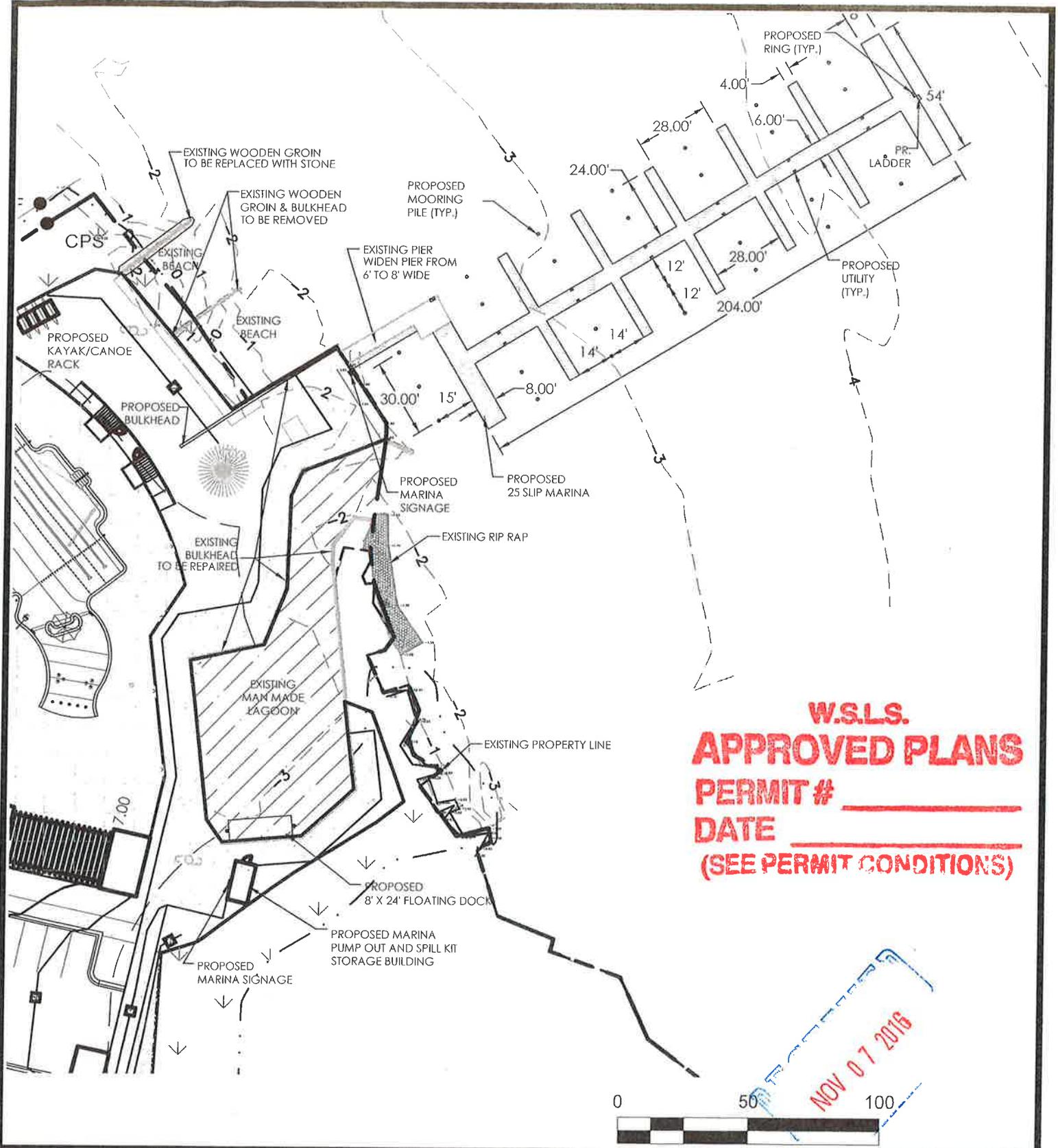
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

Job No.: 12015

Scale: 1" = 50'

Date: 1/13/15

Sheet 2 of 10



W.S.L.S.
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PERMIT # _____
DATE _____
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OVERALL MARINA SITE - PROPOSED IMPROVEMENTS

THE OVERLOOK
 TAX MAP 5-33-13.00 PARCEL 140.00

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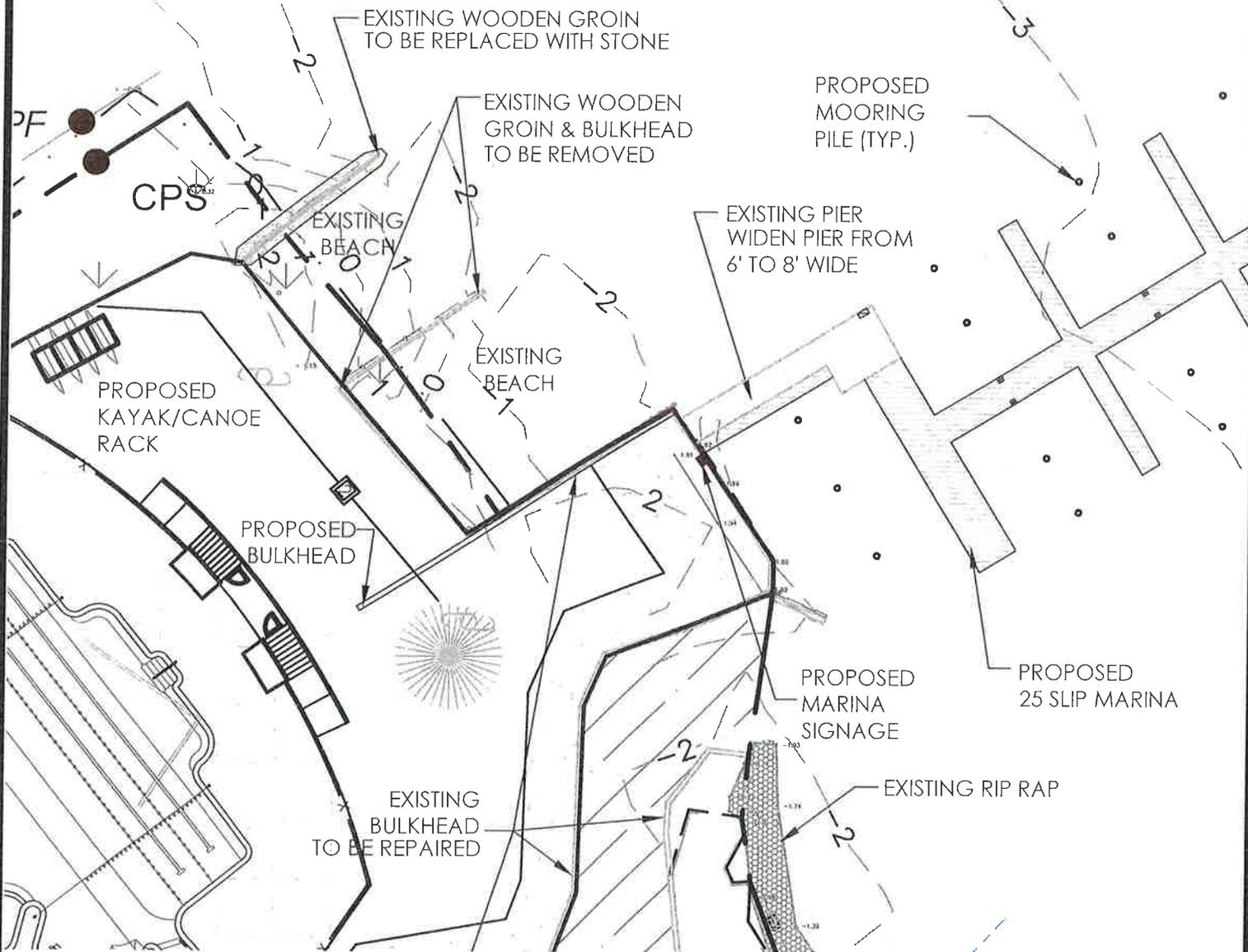
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

Job No.: 12015

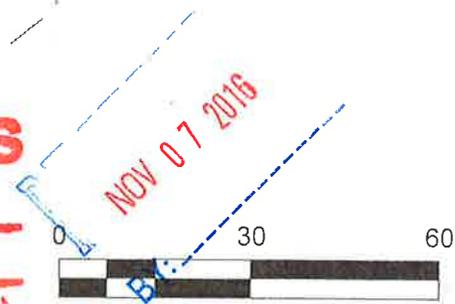
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Date: 1/13/15

Sheet 3 of 10



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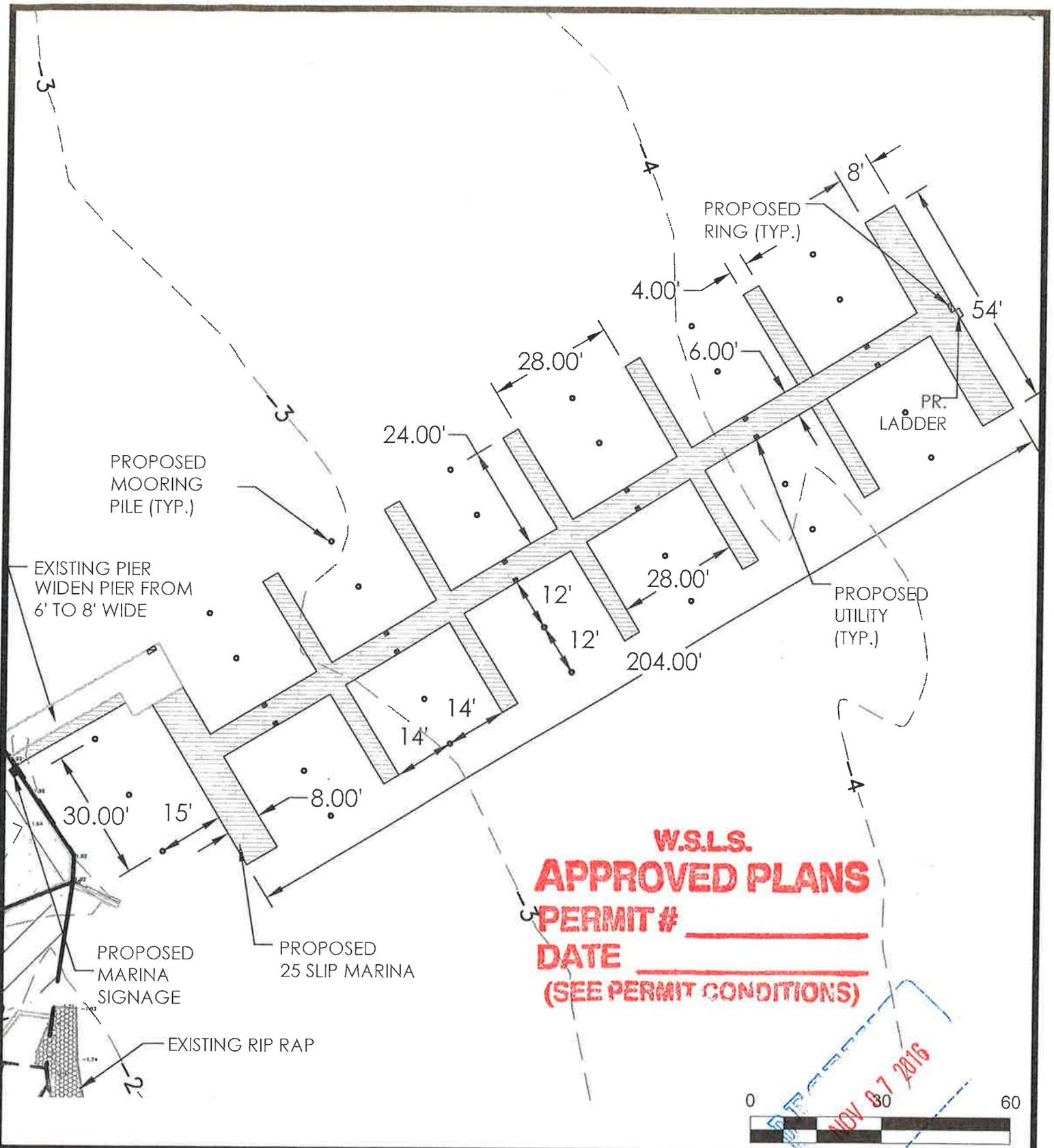
PROPOSED PIER CONNECTION AND SHORELINE PLAN

THE OVERLOOK
 TAX MAP 5-33-13.00 PARCEL 140.00

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 Scale: 1" = 30'
 Date: 1/13/15
 Sheet 4 of 10



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MARINA PIER DETAIL PLAN

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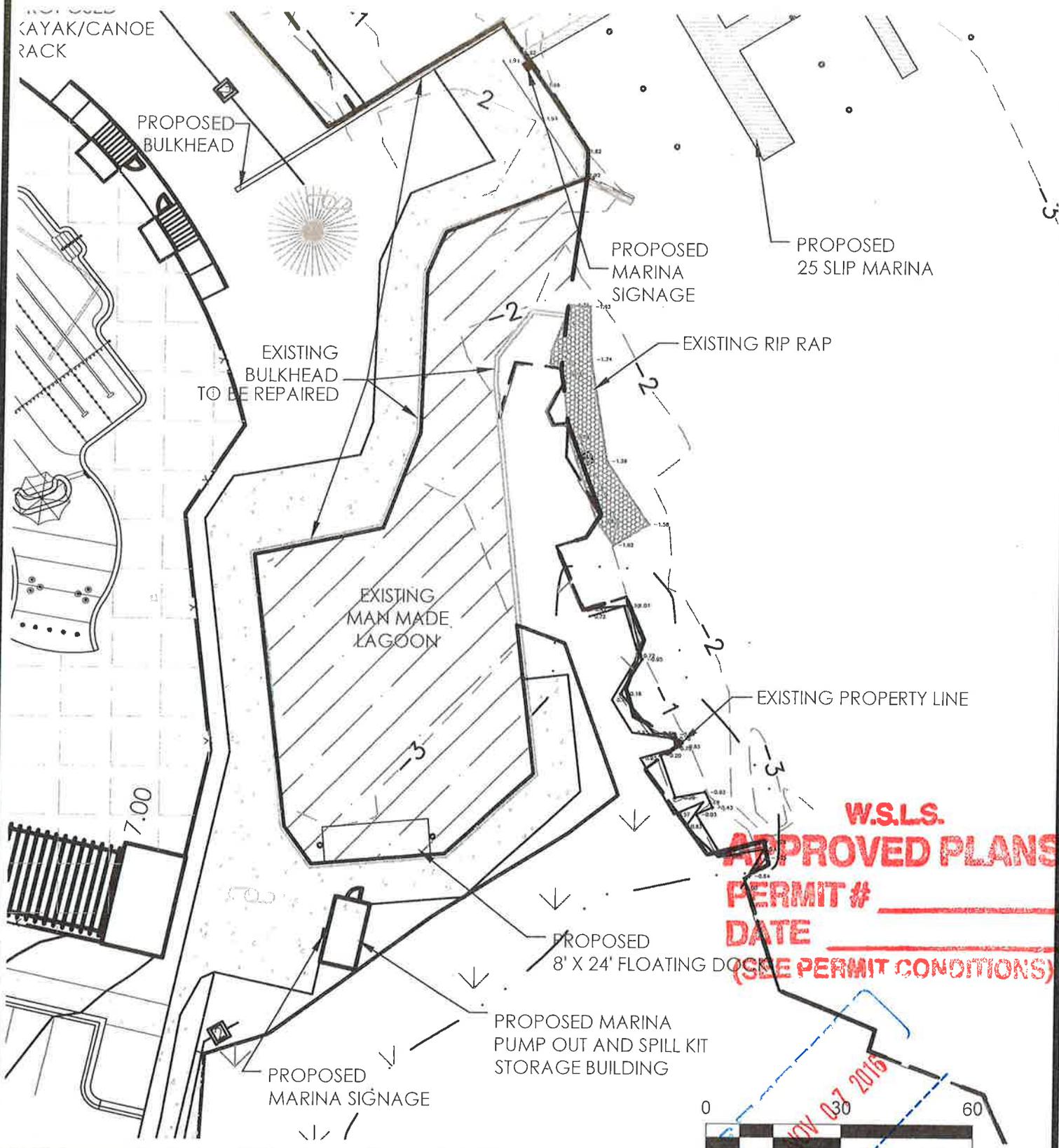
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EXISTING MAN MADE LAGOON IMPROVEMENTS PLAN

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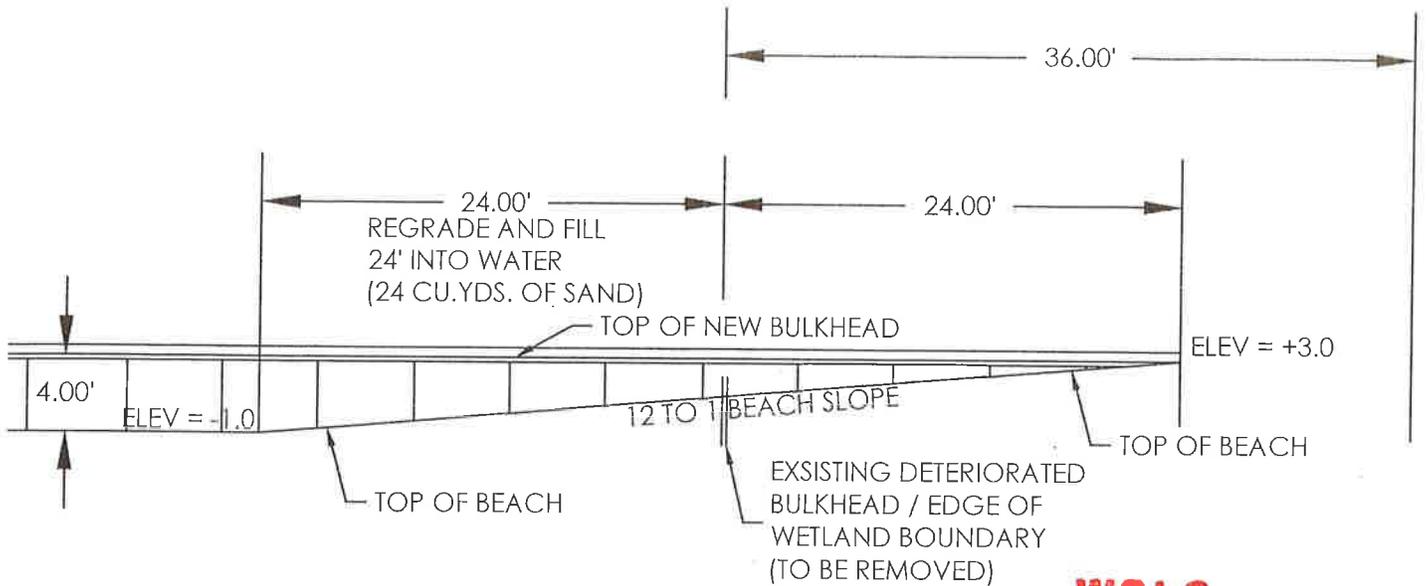
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

Job No.: 12015

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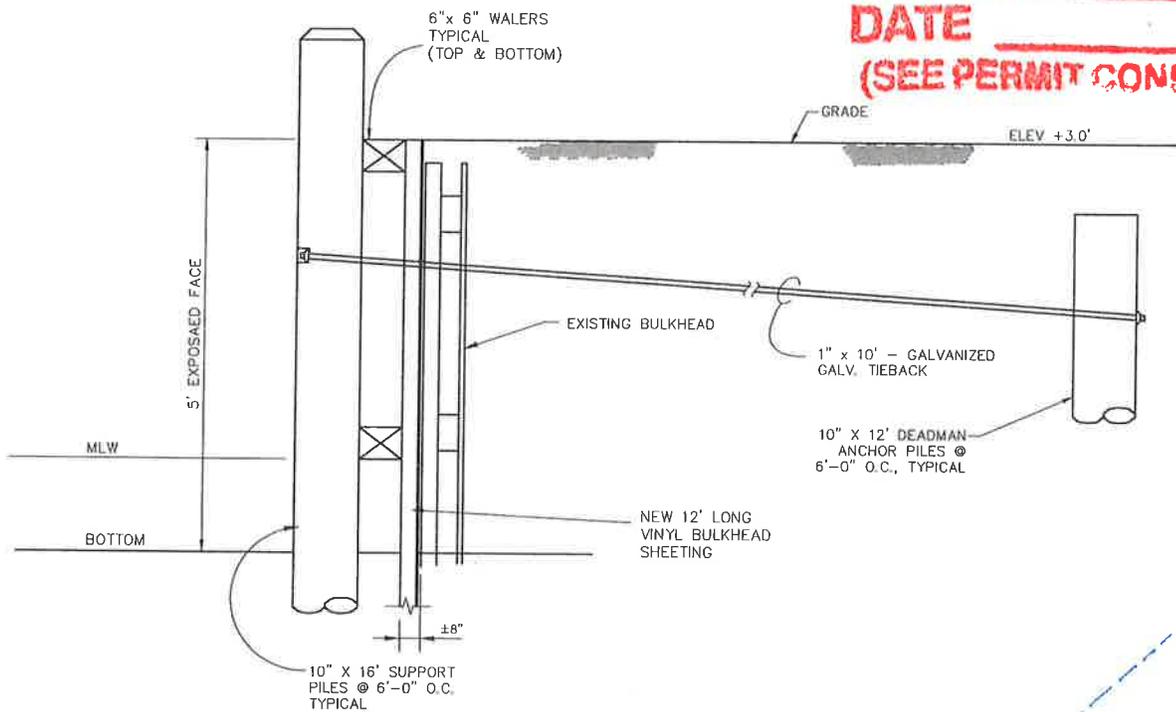
Date: 1/13/15

Sheet 6 of 10



PROPOSED BEACH PROFILE
NO SCALE

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DATE _____
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TYPICAL SECTION THRU BULKHEAD REPLACEMENT
NO SCALE

NOTE: AREA BETWEEN NEW BULKHEAD SHEETING AND EXISTING BULKHEAD SHEETING TO BE BACKFILLED.

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PROPOSED BEACH PROFILE &
TYPICAL BULKHEAD REPLACEMENT DETAIL
THE OVERLOOK
TAX MAP 5-33-13.00 PARCEL 140.00

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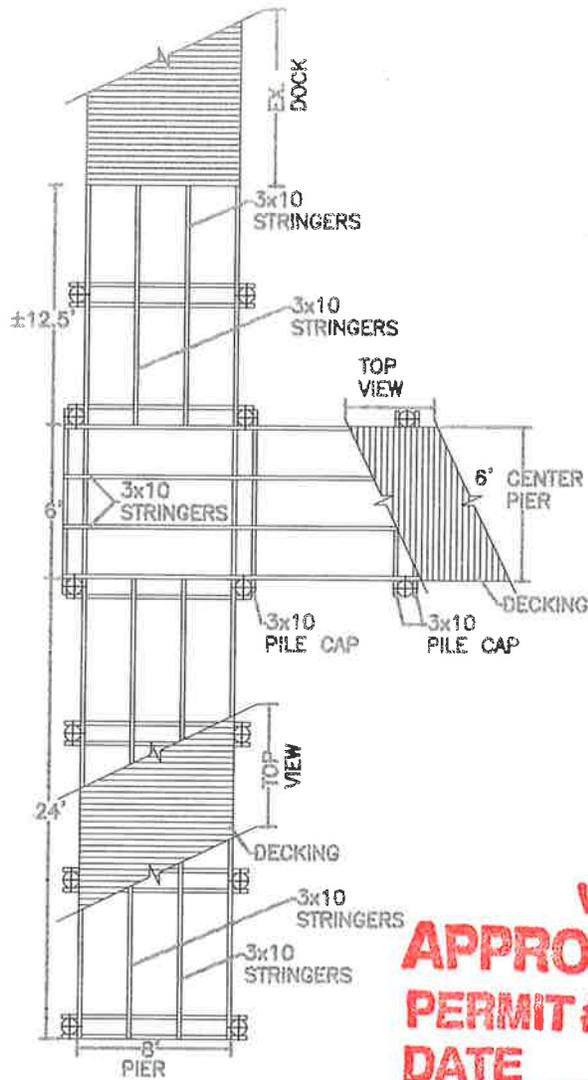
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

Job No.: 12015

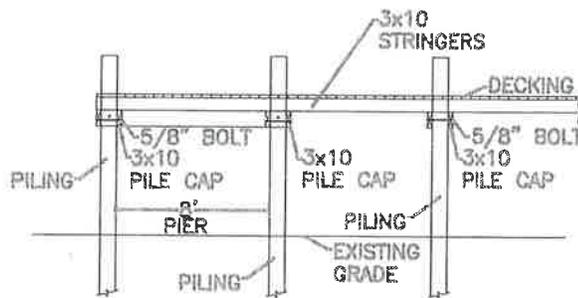
Scale: N.T.S.

Date: 1/13/15

Sheet 7 of 10



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**CENTER PIER ELEVATION
 AT EXISTING DOCK
 & DECK FRAMING DETAIL**

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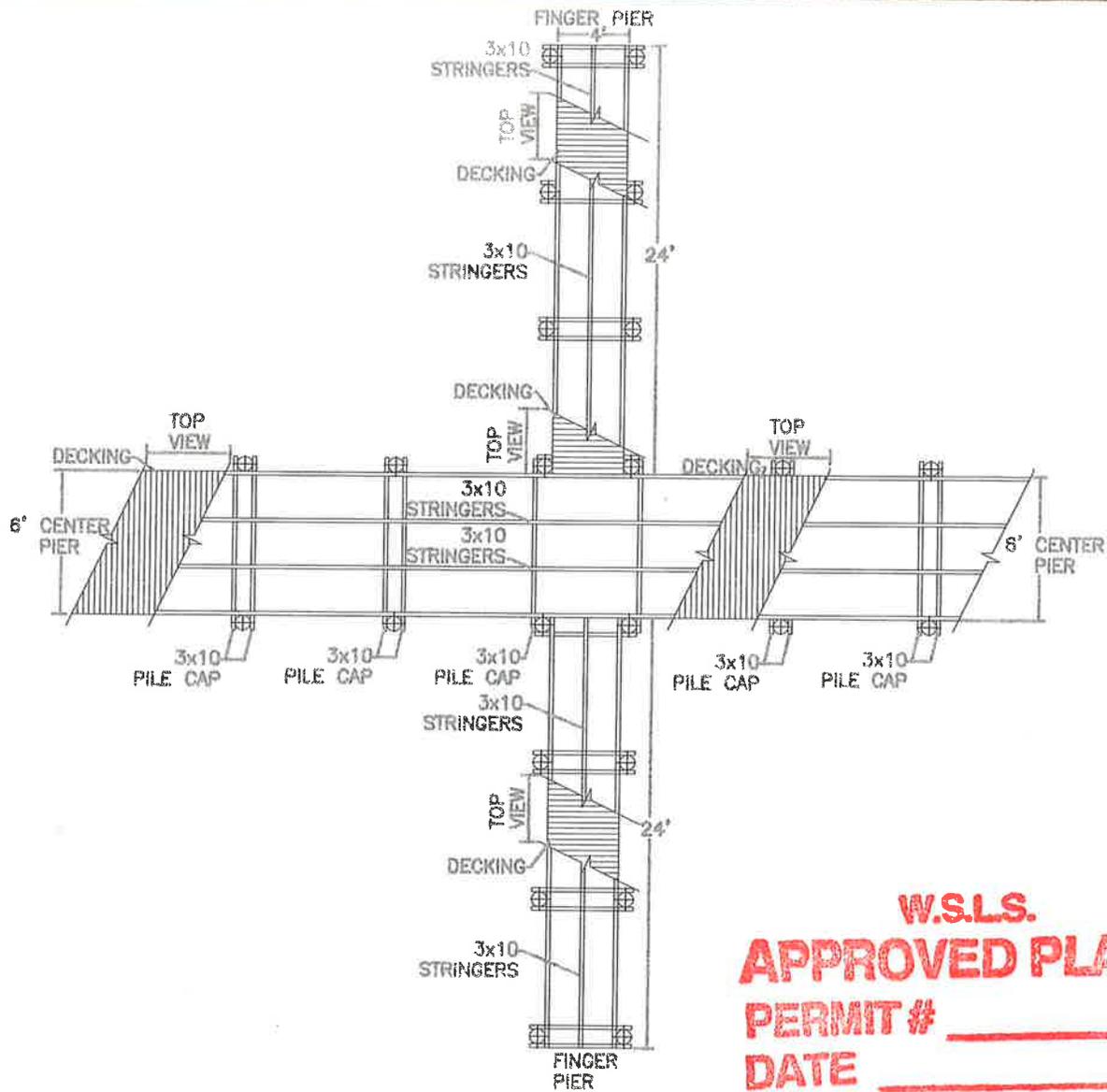
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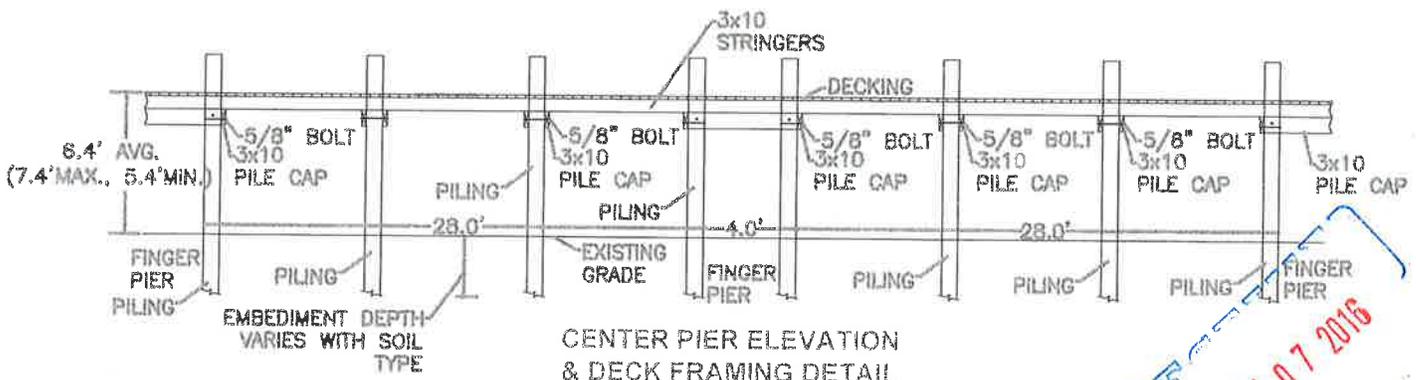
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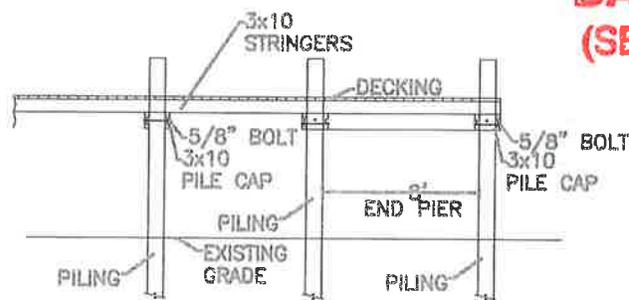
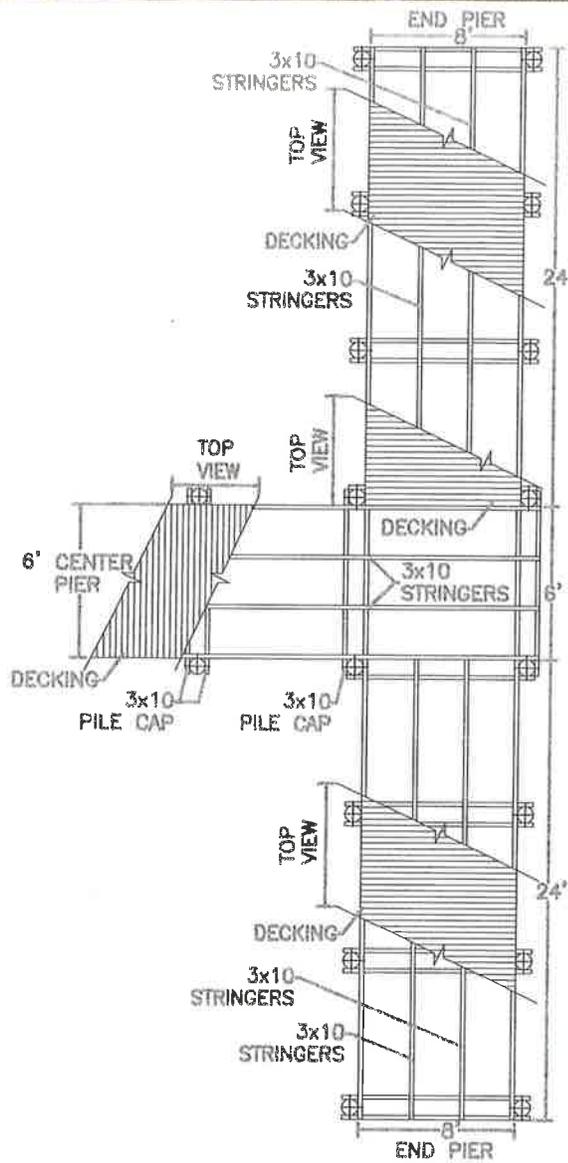
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Sheet 9 of 10



CENTER PIER ELEVATION
AT END
& DECK FRAMING DETAIL

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