



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

Office of the  
Secretary

Phone: (302) 739-9000  
Fax: (302) 739-6242

**Secretary's Order No.: 2019-W-0015**

**RE: Revised Application of TAC Beacon 1, LLC, to construct and operate a minor marina, including a community structure, 12 slip marina (to consist of 10 boat slips and 2 personal watercraft slips), and a single lane boat ramp in White Creek, located at The Solitudes of White Creek Community, Ocean View, Sussex County, Delaware, necessitating Applicant to obtain the following:  
(1) a Marina Permit; and (2) a Subaqueous Lands Lease**

**Date of Issuance: March 5, 2019**

**Effective Date: March 5, 2019**

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC"), pursuant to 7 *Del.C.* §§6003, 6004(b), 6006(4), Delaware's *Subaqueous Lands Act* (7 *Del.C.* Chapter 72), and all other relevant statutory authority, the Department of Natural Resources and Environmental Control ("Department", "DNREC") issues this Order, approving (1) a Marina permit; and (2) a Subaqueous Lands Lease to allow TAC Beacon 1, LLC ("Applicant"), to construct a minor marina by the construction and operation of a community structure, 12 slip marina (to consist of 10 boat slips and 2 personal watercraft slips), and a single lane boat ramp in White Creek, located at The Solitudes of White Creek Community, Ocean View, Sussex County, Delaware.

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

It should be noted that the design of this proposed project has been modified significantly by this Applicant from the application originally received by the Department in this matter. Initially, the Applicant had proposed construction of a 20 slip marina, to consist of 12 boat slips, 8 jet-ski slips, and a single lane boat ramp. Subsequent to the aforementioned public hearing of June 6, 2017, however, the Applicant's consultant contacted the Department to propose revisions of the proposed marina structures, in an attempt to address (1) concerns voiced by members of the public during the aforementioned hearing; and (2) concerns the Department had expressed to the Applicant prior to that hearing. Ultimately, the design of this marina was revised by the Applicant, resulting in a much reduced potential impact to existing subaqueous lands than the original design of the proposed structures. The Applicant's revisions to the proposed marina also address the major navigational concerns associated with its original application. The modifications made to the Applicant's originally proposed project, and the Department's responses to the same, will be addressed in greater detail below.

### **Background and Findings of Fact**

On November 16, 2016, the Department's Division of Water, Wetlands and Subaqueous Lands Section ("WSLS"), received an application from Environmental Resources, Inc., submitted on behalf of the Applicant, to construct and operate a 20 slip marina, to consist of 12 boat slips, 8 jet-ski slips, and a single lane boat ramp in White Creek, as noted above. This application was placed on a 20 day public notice by the Department on March 7, 2017.

During the public notice periods, the WSLs received a voluminous amount of written comment against the project. The objections from the public stated that the waterbody is already inundated with boat traffic, which leads to unsafe conditions for non-motorized water dependent activities such as paddle-boarding, canoeing and kayaking.

Concerns were also expressed by the public at that time that the proposed marina construction could be considered as a taking of public subaqueous lands. Still other comments received by the Department at that time voiced concerns regarding land disturbance activities such as tree removal, the loss of habitat for nesting birds, potentially impaired boaters leaving the proposed tiki bar area of the marina, light pollution from anticipated boat traffic, and the need to implement a no wake zone along the creek.

In reviewing this application, the WSLs also reviewed the permitting history of this area, and found that an existing Subaqueous Lands Lease had been issued to Land-Lock, LLC, on December 12, 2011, to construct a 4 foot wide by 14 foot long pier, and a 6 foot wide by 12 foot long fixed dock in White Creek, Ocean View, Delaware. That existing Subaqueous Lands Lease was subsequently transferred to TAC BEACON 1, LLC, on April 24, 2015.

Given the public comments received on the Applicant's proposed project, the Department determined it to be in the public's best interest to hold a public hearing regarding this present application. Public notice of the public hearing to be held in this matter was made on May 3, 2017. Subsequently, over twenty (20) letters of objection to the Applicant's proposed project were received by the Department.

In its original application, Applicant proposed to remove the existing structures previously authorized by the Department (under WSLs permits SL-021/11 and SL-024/15), and then construct a 20 slip minor marina consisting of one 6 foot wide by 155 foot long dock, one 6 foot wide by 280 foot long dock, one 6 foot wide by 45 foot long pier, one 6 foot wide by 40 foot long pier, and a 16 foot wide by 60 foot long boat ramp, of which 480 square feet will be channelward of the Mean High Water Line in White Creek, The Solitudes of White Creek community, Ocean View, Sussex County, Delaware.

The Department held its public hearing concerning this matter on June 6, 2017, which was attended by the Department's WSLs staff, representatives of the Applicant, and individuals from the public. Proper notice of the hearing was provided as required by law.

As noted previously herein, subsequent to the public hearing held on June 6, 2017, the Applicant's consultant contacted the Department's WSLs staff to propose revisions to its marina project, in order to (1) address the public's concerns raised at the hearing; and (2) address the concerns the Department had expressed to the Applicant prior to that hearing. The Applicant and Mr. Launay met with WSLs on July 18, 2017 to discuss structure realignment of the project, and an overall minimization of the proposed marina.

As a result of this meeting, the overall design of the marina was reduced by realigning the proposed structures as follows:

- The slip capacity of the marina was decreased from 20 to 12 (to consist of 10 boat slips and 2 personal watercraft slips);

- The two proposed floating docks were shortened from 155 feet to 130 feet in length on the east side, and from 280 feet to 235 feet in length on the west side; and
- Minimization of the proposed boat ramp by 32 square feet in public subaqueous lands.

The above changes resulted in an overall decrease of the channelward encroachment of this project, while still accommodating the Applicant's request to construct and operate a minor marina. Total square footage of the proposed project was reduced by approximately 1,662 square feet channelward of the Mean High Water Line, and 1,052 square feet channelward of the Mean Low Water Line. The new design, at the Applicant's request, is within the same limit of disturbance as originally proposed, but the potential impact to existing subaqueous lands is far less. Additionally, these changes also serve to address the major navigational concerns surrounding the original application. Accordingly, the Applicant subsequently submitted to the Department a *revised* permit application for its proposed minor marina, properly reflecting the aforementioned modifications.

Subsequent to the Applicant's agreement to revise its original proposed structures as noted above, the technical experts in the Department's Division of Water prepared a Technical Response Memorandum ("TRM") to (1) specifically address concerns voiced by both the Department and members of the public about this proposed marina project; (2) provide a formal regulatory review of the Applicant's project, in light of the proposed revisions to the same; and (3) offer the Division of Water's conclusions and recommendations with regard to this pending *revised* application for the benefit of the hearing record generated in this matter.

Subsequent to the Department's TRM having been received for inclusion into the hearing record, Hearing Officer Lisa A. Vest prepared her Hearing Officer's Report ("Report"), dated February 11, 2019, which expressly incorporated said TRM therein. Ms. Vest's Report set forth the procedural history, summarized and established the record of information ("Record") relied on in the Report, and provided findings of fact, reasons, and conclusions that recommend the Department approve this *revised* permit application, subject to the conditions set forth in the following two draft approval documents: (1) Subaqueous Lands Lease SL-455/16, for the Applicant's use of public subaqueous lands for ten years; and (2) Marina Permit MP-455/16, for the Applicant's construction and installation of a minor marina, as set forth in the Applicant's *revised* permit application. The Report also addressed the public comments received in this matter, and concluded that the same did not warrant the Department's denying the Applicant's *revised* application, or delaying the permit decision to receive any further additional information.

### **Reasons and Conclusions**

This *revised* application is for the construction and operation of a minor marina project located at The Solitudes of White Creek Community, Ocean View, Sussex County, Delaware. Specifically, the Applicant proposes a community structure, 12 slip marina (to consist of 10 boat slips and 2 personal watercraft slips), and a single lane boat ramp. Preliminarily, I find that the proposed project will require the Applicant to obtain both a Marina Permit and a Subaqueous Lands Lease from the Department's WSLS. I further find that the Applicant's proposed project is subject to the requirements of Delaware's *Subaqueous Lands Act* (7 Del.C. Chapter 72), the Department's *Marina Regulations* (7 DE Admin. Code 7501), *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and 7 Del.C. Chapter 60.

In reviewing the applicable statutes and regulations, as well as weighing public benefits of this project against potential detriments, the Department's experts in the Division of Water have concluded that the Applicant's proposed marina complies with the applicable Regulations administered by the WSLS. The Applicant has applied for one structure to serve the entire community, which the WSLS views as a positive aspect of the project, as this developer has designed the waterfront community to only allow water access from one location. Single family homes are designed to be landlocked, preventing the future construction of individual boat docking facilities.

The Applicant has also addressed other concerns voiced by the public (both before and after the public hearing) by amending its bylaws, thus reducing the number of vessels to be moored, and by revising its originally proposed project as noted above, thereby resulting in a reduction and realignment of the structure along White Creek. Furthermore, the Applicant's proposed structure dimensions are consistent with the applicable regulations governing such projects, and have been designed to minimize encroachment into navigable waters.

This hearing record reflects that concerns were voiced by members of the public over vessel traffic and public safety associated with this proposed project. Concerns were also raised with regard to the potential for water use conflicts between non-motorized water dependent activities and motorized vessels utilizing White Creek. Determining the carrying capacity of a waterbody in relation to recreational use and safety is an important consideration when evaluating whether public use of State waters should be restricted.

In order to address the above referenced concerns, the following special condition has been included in the draft Marina Permit and draft Subaqueous Lands Lease:

*Due to navigational concerns addressed during the public process, no further marina expansion shall be authorized at The Solitudes on White Creek by the Department of Natural Resources and Environmental Control.*

The Applicant's proposed project provides water access without directly impacting any of the adjacent State-regulated tidal wetlands, which make up approximately one-third of the site. Additionally, the Applicant has practiced avoidance of the adjacent wetlands, and is proposing to create a small area of wetlands where the existing boat ramp is located.

It should also be noted that the Applicant has minimized potential sources of contamination, as follows: (1) prohibiting fish cleaning within the waters of the marina; (2) not providing fueling facilities; and (3) not allowing major vessel maintenance work to be performed on the grounds of the marina. Additionally, the Operations and Maintenance ("O&M") Plan submitted by the Applicant for this proposed marina includes rules and regulations for users of the marina, which contain best management practices and tips for boaters, as well as procedures regarding safety precautions to be implemented during hurricanes and other severe weather events.

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

The Record developed in this matter indicates that the Department's experts have considered all statutes and regulations that govern projects such as the Applicant's proposed marina, and have recommended issuance of all permits necessary for completion of the same to the Applicant in this matter.

I find and conclude that the Applicant has adequately demonstrated its compliance with all requirements of the statutes and regulations, as noted herein, and that the Record supports approval of the *revised* permit application submitted by TAC Beacon 1, LLC. Accordingly, this Order approves all permits required for this proposed marina project, consistent with the Record developed in this matter, and directs that the same be issued by the Department in the customary form, and with appropriate conditions.

Further, the Department concludes and directs the following:

1. The Department has jurisdiction under *7 Del. C. §§6003, 6004, 6006(4), 7 Del. C. Chapter 72*, and all other relevant statutory authority, to make a final determination on the Applicant's *revised* permit application, after holding a public hearing and considering the public comments and all information contained in the Record generated in this matter;
2. The Department provided proper public notices of the permit application of TAC Beacon 1, LLC, and of the public hearing held on June 6, 2017, and held said hearing in a manner required by the law and regulations;
3. The Department considered all timely and relevant public comments in the Record, as established in the Report, prior to issuing this Order as its final decision;

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

  
Shawn M. Garvin  
Secretary

## HEARING OFFICER'S REPORT

**TO:** The Honorable Shawn M. Garvin  
Cabinet Secretary, Department of Natural Resources and Environmental Control

**FROM:** Lisa A. Vest  
Public Hearing Officer, Office of the Secretary  
Department of Natural Resources and Environmental Control

**RE:** *Revised* Permit Application of TAC Beacon 1, LLC, for the construction and installation of a minor marina, specifically, a single community structure, 12 slip marina (consisting of 10 boat slips and 2 personal watercraft slips), and a single lane boat ramp in White Creek, located at The Solitudes of White Creek Community, Ocean View, Sussex County, Delaware, thus necessitating Applicant to obtain the following: (1) a Marina Permit; and (2) a Subaqueous Lands Lease

**DATE:** February 11, 2019

---

### **I. BACKGROUND AND PROCEDURAL HISTORY:**

A public hearing was held on Tuesday, June 6, 2017, at 6:00 p.m. by the Department of Natural Resources and Environmental Control (“DNREC”, “Department”) at the South Coastal Library, 43 Kent Avenue, Bethany Beach, Delaware, to receive comment on the permit application of TAC Beacon 1, LLC (“Applicant”), to obtain the following: (1) a Marina permit; and (2) a Subaqueous Lands Lease. Applicant seeks to construct and install a minor marina, specifically, a single community structure, 12 slip marina (to consist of 10 boat slips and 2 personal watercraft slips), and a single lane boat ramp in White Creek, located at The Solitudes of White Creek Community, Ocean View, Sussex County, Delaware. The Applicant’s proposed project is subject to the requirements of Delaware’s *Subaqueous Lands Act* (7 Del.C. Chapter 72), the Department’s *Marina Regulations* (7 DE Admin. Code 7501), the *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and 7 Del.C. Chapter 60.

It should be noted that the design of this proposed project has been modified significantly by this Applicant from the application originally received by the Department in this matter. Initially, the Applicant had proposed construction of a 20 slip marina, consisting of 12 boat slips and 8 jet-ski slips, and a single lane boat ramp. Subsequent to the public hearing of June 6, 2017, however, the Applicant's consultant contacted the Department to discuss a realignment of the proposed marina structures, in an attempt to address (1) concerns voiced by members of the public during the aforementioned hearing; and (2) concerns the Department had expressed to the Applicant prior to that hearing. Ultimately, the design of this marina was revised by the Applicant, resulting in a much reduced potential impact to existing subaqueous lands than the design of the originally proposed structures. The revised design of the proposed marina also addresses the major navigational concerns associated with the original application. The modifications made to the Applicant's proposed marina, and the Department's responses to the same, will be addressed in greater detail below.

On November 16, 2016, the Department's Division of Water, Wetlands and Subaqueous Lands Section ("WSLS"), received a permit application from Environmental Resources, Inc., submitted on behalf of the Applicant, to construct a 20 slip marina, consisting of 12 boat slips, 8 jet-ski slips, and a single lane boat ramp in White Creek, as noted above. This application was placed on a 20 day public notice by the Department on March 7, 2017. During the public notice periods, the WSLS received a voluminous amount of written comment against the project. The objections from the public stated that the waterbody is already inundated with boat traffic, which leads to unsafe conditions for non-motorized water dependent activities such as paddle-boarding, canoeing and kayaking.

Concerns were also expressed by the public at that time that the proposed marina construction could be considered a taking of public subaqueous lands. Still other comments received by the Department at that time voiced concerns regarding land disturbance activities such as tree removal, the loss of habitat for nesting birds, potentially impaired boaters leaving the proposed tiki bar area of the marina, light pollution from anticipated boat traffic, and the need to implement a no wake zone along the creek.

In reviewing this application, the WSLS also reviewed the permitting history of this area, and found that an existing Subaqueous Lands Lease had been issued to Land-Lock, LLC on December 12, 2011, to construct a 4 foot wide by 14 foot long pier, and a 6 foot wide by 12 foot long fixed dock in White Creek, Ocean View, Delaware. That existing Subaqueous Lands Lease was transferred to TAC Beacon 1, LLC, on April 24, 2015.

Given the public comments received on the Applicant's proposed project, the Department determined it to be in the public's best interest to hold a public hearing regarding this present application. Public notice of the public hearing to be held in this matter was made on May 3, 2017. Subsequently, over twenty (20) letters of objection to the Applicant's proposed project were received by the Department.

In its application, Applicant proposed to remove the existing structures previously authorized by the Department (under prior WSLS permits SL-021/11 and SL-024/15), and to construct a 20 slip minor marina consisting of one 6 foot wide by 155 foot long dock, one 6 foot wide by 280 foot long dock, one 6 foot wide by 45 foot long pier, one 6 foot wide by 40 foot long pier, and a 16 foot wide by 60 foot long boat ramp, of which 480 square feet will be channelward of the Mean High Water Line in White Creek, The Solitudes of White Creek Community, Ocean View, Sussex County, Delaware.

The Department held its public hearing concerning this matter on June 6, 2017, which was attended by the Department's WSLs staff, representatives of the Applicant, and individuals from the public. Comment was received from the public at that hearing, and will be discussed in further detail below. Proper notice of the hearing was provided as required by law.

**II. SUMMARY OF THE PUBLIC HEARING RECORD:**

The public hearing record consists of the following documents: (1) a verbatim transcript; (2) eight documents introduced by then-presiding Hearing Officer Robert P. Haynes, Esq., at the public hearing held on June 6, 2017, and marked accordingly as "DNREC Exhibits 1-8"; (3) four documents introduced by the Applicant's consultant, Edward Launay (of Environmental Resources, Inc.) at the time of the aforementioned public hearing, and marked accordingly as "Applicant Exhibits 1-4"; and (4) Technical Response Memorandum from Matthew Jones, Environmental Scientist, WSLs, dated August 15, 2018. The Department's persons primarily responsible for reviewing this application, Mr. Jones, along with Tyler Brown, Section Manager, WSLs, and Steven Smailer, Environmental Program Administrator, DNREC Division of Water, developed the record with the relevant documents in the Department's files.

Following opening remarks from Hearing Officer Haynes, Mr. Launay proceeded to offer a brief presentation on behalf of the Applicant for the benefit of the hearing record. He advised that The Solitudes of White Creek Community will consist of 119 residential homes, all of which will have common riparian rights to 1,140 linear feet of shoreline along White Creek. The Solitudes of White Creek Home Owners Association will own the riparian buffer adjoining White Creek, eliminating the possibility of any individual dock approvals within the community. An existing boat ramp on the east side of the property was to be removed, and approximately 280 square feet will be restored as wetlands as part of the project.

In his presentation, Mr. Launay stated that there was a demand from the community for the marina, and that the Applicant had met all necessary regulatory requirements for construction of this minor marina. Additionally, Mr. Launay also noted that the proposed project minimizes the amount of structure over subaqueous lands by constructing one facility for 119 single family homes.

The concerns of those opposed to the Applicant's proposed project were then addressed by Mr. Launay. With regard to the navigation concerns, he stated that there are five existing piers moving upstream from the parcel toward White Creek Manor Marina. The distances of those five piers, as measured from the ends of the structures to the opposite shoreline, are 88 feet, 133 feet, 116 feet, 99 feet, and 120 feet, respectively. The proposed community structure varies from 100 to 120 feet, consistent with the existing navigation channel. Additionally, he explained that elsewhere on White Creek, it can be found that the distance between docks and shorelines is as little as 50 feet in terms of navigational channels.

With regard to the design of the marina (and how it complies with the Department's *Regulations Governing the Use of Subaqueous Lands*), Mr. Launay noted that DNREC does not allow an encroachment, for navigational purposes, of more than 20 percent of the channel width measured from the mean low water line of the shoreline to the mean low water line on the opposite shoreline. Mr. Launay advised that the Bathymetric survey completed by Cypress Surveys, LLC (as contained within the Applicant's exhibits incorporated into the hearing record, as noted above) indicates that the deeper part of the creek is within the center of the creek, which is actually away from the proposed docks and piers.

In further support of the Applicant's proposed project, Mr. Launay stated that there would be no impacts to state-regulated wetlands, and that the existing boat ramp was going to be removed and restored with approximately 280 square feet of wetlands. Moreover, there were no state or federally endangered or threatened species to be impacted by this project, pursuant to the correspondence from both the U.S. Department of the Interior and the Department's Division of Fish and Wildlife Heritage Program (also contained within the Applicant's exhibits incorporated into the hearing record, as previously noted). Lastly, Mr. Launay advised that the proposed project was fully approved and permitted by Sussex County Planning and Zoning.

After the Applicant's presentation had concluded, the floor was then opened for the purpose of offering public comment on the record regarding this proposed project. The hearing record generated in this matter indicates that fourteen individuals spoke in opposition to the proposed marina at the time of the public hearing of June 6, 2017. Concerns expressed were centered primarily on the issue of boating safety, specifically, the presence of additional boat traffic, boats running aground, unsafe conditions for non-motorized water dependent activities, the enforcement of no-wake zones, and potentially impaired boaters leaving the Applicant's proposed tiki bar. Additional concerns were voiced regarding the need to balance economic development against environmental sustainability. Some attendees who had lived along White Creek in various communities – many for over several decades – spoke at the hearing of numerous negative changes that they have perceived in occurrences of wildlife and in water quality in that area over the years. Still others expressed concerns about the taking of public subaqueous lands for profit, and the potential for light pollution from the boat traffic.

As noted previously herein, the Applicant's consultant contacted the Department's WSLs staff subsequent to the public hearing held on June 6, 2017 to propose revisions to this project, in order to (1) address the public's concerns raised at the hearing; and (2) address the concerns the Department had expressed to the Applicant prior to that hearing. The Applicant and Mr. Launay met with WSLs on July 18, 2017 to discuss structure realignment and an overall minimization of the proposed marina.

As a result of this meeting, the overall design of the marina was reduced by realigning the proposed structures as follows:

- The slip capacity of the marina was decreased from 20 to 12 (to consist of 10 boat slips and 2 personal watercraft slips);
- The two proposed floating docks were shortened from 155 feet to 130 feet in length on the east side, and from 280 feet to 235 feet in length on the west side; and
- Minimization of the proposed boat ramp by 32 square feet in public subaqueous lands.

The above changes resulted in an overall decrease of the channelward encroachment of this project, while still accommodating the Applicant's request for a minor marina. Total square footage of the proposed project was reduced by approximately 1,662 square feet channelward of the Mean High Water Line, and 1,052 square feet channelward of the Mean Low Water Line. The new design, at the Applicant's request, is within the same limit of disturbance as originally proposed, but the impact of the existing subaqueous lands is far less. Additionally, these changes also serve to address the major navigational concerns surrounding the original application.

Accordingly, the Applicant subsequently submitted to the Department a *revised* permit application for its proposed minor marina, properly reflecting the aforementioned modifications. The Applicant's *revised* permit application, received by the Department on August 17, 2017, is attached hereto as Appendix "A."

Subsequent to the Applicant's agreement to revise its original proposed structures as noted above, this Hearing Officer requested a Technical Response Memorandum ("TRM") from the technical experts in the Department's Division of Water. Specifically, this TRM was asked to (1) address the concerns raised by the Department's WSLs staff prior to the hearing; (2) address the concerns voiced by the public at the at the time of the public hearing; (3) provide a formal regulatory review of the Applicant's proposed marina project; and (4) offer the Division of Water's conclusions and recommendations with regard to the Applicant's pending *revised* permit application for the benefit of the hearing record generated in this matter.

I find that the Division of Water's TRM offers a detailed regulatory review of all aspects of the Applicant's proposed marina project, identifies all of the concerns raised at the public hearing of June 6, 2017, and responds to them in a balanced manner, accurately reflecting the information contained in the formal hearing record. Thus, the aforementioned TRM is attached hereto as Appendix "B" and expressly incorporated herein as such.

### **III. RECOMMENDED FINDINGS AND CONCLUSIONS:**

This application is for a minor marina project located at The Solitudes of White Creek Community, Ocean View, Sussex County, Delaware. Specifically, the Applicant's project, now *revised* from the original application as noted above, proposes the construction and installation of a community structure, 12 slip marina, and a single lane boat ramp.

Preliminarily, I find that the proposed project will require the Applicant to obtain both a Marina Permit and a Subaqueous Lands Lease from the Department's WSLS. I further find that the Applicant's proposed project is subject to the requirements of Delaware's *Subaqueous Lands Act* (7 Del.C. Chapter 72), the Department's *Marina Regulations* (7 DE Admin. Code 7501), *Regulations Governing the Use of Subaqueous Lands* (7 DE Admin. Code 7504), and 7 Del.C. Chapter 60.

In reviewing the applicable statutes and regulations, as well as weighing public benefits of this project against potential detriments, the Department's experts in the Division of Water have concluded that the construction/installation of the Applicant's *revised* proposed marina, complies with the applicable Regulations administered by the WSLS. The Applicant has applied for one structure to serve the entire community, which the WSLS views as a positive aspect of the project, as this developer has designed the waterfront community to only allow water access from one location. Single family homes are designed to be landlocked, preventing the future construction of individual boat docking facilities. Also, the Applicant has addressed most of the public's concerns voiced both before and after the public hearing by amending its bylaws, thus reducing the number of vessels to be moored, and by revising its originally proposed project as noted above, thereby resulting in a reduction and realignment of the structure along White Creek. Furthermore, the Department notes in its TRM that the Applicant's proposed structure dimensions are consistent with the applicable regulations, and have been designed to minimize encroachment into navigable waters.

This hearing record reflects that concerns were voiced by members of the public over vessel traffic and public safety associated with this proposed project. Concerns were also raised with regard to the potential for water use conflicts between non-motorized water dependent activities and motorized vessels utilizing White Creek. Determining the carrying capacity of a waterbody in relation to recreational use and safety is an important consideration when evaluating whether public use of State waters should be restricted.

In order to address the above referenced concerns, the following special condition has been included in the draft Marina Permit and draft Subaqueous Lands Lease:

*Due to navigational concerns addressed during the public process, no further marina expansion shall be authorized at The Solitudes on White Creek by the Department of Natural Resources and Environmental Control.*

The Applicant's proposed project provides water access without directly impacting any of the adjacent State-regulated tidal wetlands, which make up approximately one-third of the site. Additionally, the Applicant has practiced avoidance of the adjacent wetlands, and is proposing to create a small area of wetlands where the existing boat ramp is located.

It should also be noted that the Applicant's proposed marina has minimized potential sources of contamination, as follows: (1) prohibiting fish cleaning within the waters of the marina; (2) not providing fueling facilities; and (3) not allowing major vessel maintenance work to be performed on the grounds of the marina. Additionally, the Operations and Maintenance ("O&M") Plan submitted by the Applicant for this proposed marina includes rules and regulations for users of the marina, which contain best management practices and tips for boaters, as well as procedures regarding safety precautions to be implemented during hurricanes and other severe weather events.

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

The record developed in this matter indicates that the Department's experts have considered all statutes and regulations that govern projects such as the Applicant's proposed project, and have recommended issuance of all permits necessary for completion of the same. I find and conclude that the Applicant has adequately demonstrated its compliance with all requirements of the statutes and regulations, as noted herein, and that the record supports approval of the *revised* permit application submitted by TAC Beacon 1, LLC.

In conclusion, I recommend that all permits required for this proposed minor marina, consistent with the record developed in this matter, be issued by the Department in the customary form, and with appropriate conditions.

Further, I recommend the Secretary adopt the following findings and conclusions:

1. The Department has jurisdiction under 7 *Del. C.* §§6003, 6004, 6006(4), and all other relevant statutory authority, to make a final determination on the Applicant's *revised* permit application after holding a public hearing, considering the public comments, and all information contained in the Record generated in this matter;
2. The Department provided proper public notices of the permit application of TAC Beacon 1, LLC, and of the public hearing held on June 6, 2017, and held said hearing to consider any public comment that may be offered on the same, in a manner required by the law and regulations;

3. The Department considered all timely and relevant public comments in the Record, as established in the Department's above referenced TRM;
4. The Department has carefully considered the factors required to be weighed in issuing all permits required of this proposed marina project, and finds that the Record supports approval of the Applicant's *revised* permit application and the issuance of all required permits and leases associated with same;
5. The Department shall issue the following permit and lease to the Applicant: (1) a Marina Permit; and (2) a Subaqueous Lands Lease. Furthermore, said permit and lease shall include all special conditions as set forth in the Department's draft permit and lease, to ensure that Delaware's environment and public health will be protected from harm;
6. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and
7. The Department shall serve and publish its Order on its internet site, and shall provide legal notice of the Order in the same manner that the Department provided legal notice of the Application.



---

LISA A. VEST  
Public Hearing Officer

\\ahear\TAC Beacon 1 Permit Applications 2019

Attachments/Appendices:

Appendix A: *Revised* Permit Application (received 08/17/17)

Appendix B: Division of Water TRM (08/15/18)

## **APPENDIX “A”**



July 31, 2017

ERI Project No.: 0707#0481

Mr. Steven Smailer, Program Manager  
Delaware Department of Natural Resources and Environmental Control  
Division of Water Resources, Wetlands and Subaqueous Lands Section  
89 Kings Highway  
Dover, Delaware 19901

**Re: Revision of Subaqueous Lands Permit and Marina Permit Applications**  
Proposed Community Dock  
Solitudes on Whites Creek  
Tax Map: 134-12.00, Parcel: 170.00  
Baltimore Hundred, Millville/Ocean View, Sussex County, Delaware

Applicant: TAC Beacon 1, LLC (Attn.: Mr. Robert Sipple)

Dear Mr. Smailer:

AUG 17 2017

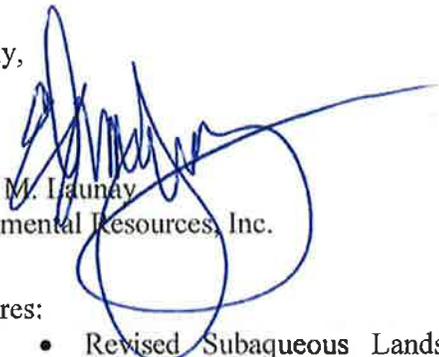
Environmental Resources, Inc. (ERI), is writing to you on behalf of the applicant, TAC Beacon 1, LLC (C/O: Mr. Robert Sipple) and the Solitudes on Whites Creek Property Owners Association, in order to provide a revised application for a Subaqueous Lands Permit, Subaqueous Lands Lease, and Marina Permit for the Solitudes on White Creek community dock.

As a result of written comments, comments noted during the public hearing for this project and comments received from Mr. Tyler Brown and Mr. Matt Jones of your staff at a field visit held July 18, 2017 the application has been revised as follows:

Both the eastern and western portions of the dock have been reduced in length to 130 feet and 235 feet respectively. The easterly dock and the boat ramp have been moved landward. The total maximum capacity of vessels to be moored has been reduced from twenty to twelve. A maximum of ten boats will be moored and only two jet ski floats are proposed. With these changes any potential adverse impact to navigation, environmental or public interest considerations relevant to this application have been avoided.

We appreciate the opportunity to work with the Wetlands and Subaqueous Lands Section on the redesign and modification of this project. Enclosed are three (3) copies of the revised materials, permit drawings, and O&M plan. Thank you in advance for your attention to this project. If you have any questions or comments in regards to the Solitudes on Whites Creek project, please feel free to contact me at (302) 436-9637.

Sincerely,



Edward M. Launay  
Environmental Resources, Inc.

Enclosures:

- Revised Subaqueous Lands Permit Application (Pages 1-6) and Project Description Attachment) & Appendices A, B, N, and O,
- Revised Project Plans – Prepared by Land Design, Inc. (Sheets 2-6)
- Revised Operation and Maintenance Plan- August 2017

cc: Mr. Robert Sipple, TAC Beacon 1, LLC

AUG 17 2017



# WETLANDS AND SUBAQUEOUS LANDS SECTION PERMIT APPLICATION FORM

**For Subaqueous Lands, Wetlands, Marina and  
401 Water Quality Certification Projects**

**State of Delaware  
Department of Natural Resources and Environmental Control  
Division of Water**

**Wetlands and Subaqueous Lands Section**



AUG 17 2017

A handwritten signature in blue ink, appearing to be a stylized "R" or "K", is written over a faint rectangular stamp area.

APPLICATION FOR APPROVAL OF  
SUBAQUEOUS LANDS, WETLANDS, MARINA  
AND WATER QUALITY CERTIFICATION PROJECTS

**PLEASE READ THE FOLLOWING INSTRUCTIONS CAREFULLY****Application Instructions:**

1. Complete each section of this basic application and appropriate appendix as thoroughly and accurately as possible. Incomplete or inaccurate applications will be returned. For projects involving docks, piers or wetland walkways, please refer to the Guidance Document for Boat Docking Facilities and Wetland Walkways.
2. All applications must be accompanied by scaled site plans and cross-section plans that show the location and design details of the proposed project. Full construction plans should be submitted for major projects.
3. All applications must have an original signature page and proof of ownership or permitted land use agreement.
4. Submit an original and two (2) additional completed copies of the application (total of 3) with the appropriate application fee\* to:

**DNREC  
Wetlands and Subaqueous Lands Section  
89 Kings Highway  
Dover, Delaware 19901**

\*Application fees are non-refundable regardless of the Permit decision or application status.

5. No construction may begin at the project site before written approval has been received from this office.

**Additional Information:**

1. Tax Parcel Information:
 

New Castle County	(302) 395-5400
Kent County	(302) 736-2010
Sussex County	(302) 855-7878
2. Recorder of Deeds:
 

New Castle County	(302) 571-7550
Kent County	(302) 744-2314
Sussex County	(302) 855-7785
3. A separate application and approval may be required through the Army Corps of Engineers. Applicants are strongly urged to contact the Corps for a determination of their permitting requirements. The contact number for the Regulator of the Day is (215) 656-6728.  
<http://www.nap.usace.army.mil/Missions/Regulatory.aspx>
4. **For questions about this application or program contact the Wetlands and Subaqueous Lands Section at (302)739-9943.** Office hours are Monday through Friday, 8:00 AM to 4:30 PM except State Holidays.  
<http://www.dnrec.delaware.gov/wr/Services/Pages/WetlandsAndSubaqueousLands.aspx>

## APPLICANT'S REVIEW BEFORE MAILING

### DID YOU COMPLETE THE FOLLOWING?

- |                  |   |
|------------------|---|
| <u>  X  </u> Yes | BASIC APPLICATION   |
| <u>  X  </u> Yes | APPENDICES  |
| <u>  X  </u> Yes | VICINITY MAP  |
| <u>  X  </u> Yes | PLAN VIEW   |
| <u>  X  </u> Yes | ELEVATION OR SECTION VIEW   |
| <u>  X  </u> Yes | SIGNATURE PAGE (Page 3) with Agent Authorization if appropriate                           |
| <u>  X  </u> Yes | COPY OF PROPERTY DEED & SURVEY  |
| <u>  X  </u> Yes | THREE (3) COMPLETE COPIES   |
| <u>  X  </u> Yes | LIST OF ADJACENT PROPERTY OWNERS<br>(As per item #14A & B of this basic application form) |
| <u>  X  </u> Yes | APPROPRIATE APPLICATION FEE<br>(Checks should be made payable to the State of Delaware)   |

### Mail 3 complete copies of the application, with drawings to:

Department of Natural Resources and Environmental Control  
Wetlands and Subaqueous Lands Section  
89 Kings Highway  
Dover, DE 19901

### BEFORE SIGNING AND MAILING YOUR APPLICATION, PLEASE READ THE FOLLOWING:

The Department requests that the contractor or party who will perform the construction of your proposed project, if other than the applicant, sign the application signature page along with the applicant in the spaces provided. When the application is signed by the contractor as well as the applicant, the Department will issue the Permit to both parties. For Leases, the contractor will receive a separate construction authorization that will make them subject to all of the terms and conditions of the Lease relating to construction. This will allow more fair and consistent enforcement of the conditions of the Permit or Lease by ensuring the proper liability of the Contractor.

If you have not yet chosen a contractor by the time of application, you may wish to do so prior to submitting the application for processing. If you choose to submit your application without the signature of your contractor, you will be held solely responsible for all of the terms and conditions relating to construction and which require that the permitted structure or activity be installed or conducted in accordance with the approved plans and permit conditions.

**Section 1: Applicant Identification**

1. Applicant's Name: TAC BEACON 1, LLC Telephone#: 302-373-5957  
 Mailing Address: Solitudes on Whites Creek Poperty Fax #:  
Owners Association, Inc.; Attn: Mr. Robert Sipple E-mail: bob@lighthouse Realtyfund.com  
2500 Wrangle Hill Road, Suite 101, Bear DE 19701
2. Consultant's Name: Mr. Edward M Launay Company Name: Environmental Resources, Inc.  
 Mailing Address: 38173 DuPont Boulevard Telephone#: 302-436-9637  
Selbyville, DE 19975 Fax #: 302-436-9639  
 E-mail: elaunay@ericonsultants.com
3. Contractor's Name: To be Determined. Company Name: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_ Telephone #: \_\_\_\_\_  
 Fax #: \_\_\_\_\_  
 E-mail: \_\_\_\_\_

**Section 2: Project Description**

4. Check those that apply:  
 New Project/addition to existing project?       Repair/Replace existing structure? (If checked, must answer #16)

5. Project Purpose (Attach additional sheets as necessary):  
Develop a community marina and boat ramp for small vessels and jet skis to provide for water access and recreation for the  
119 single home community of the Solitudes on White Creek. An existing dock, pier, and boat ramp will be removed. A maximum total  
of 10 boats and 2 jet skis will be moored at the facility (12 vessels in total). SEE ATTACHED SHEET

6. Check each Appendix that is enclosed with this application:

<input checked="" type="checkbox"/>	A. Boat Docking Facilities		G. Bulkheads	<input checked="" type="checkbox"/>	N. Preliminary Marina Checklist
<input checked="" type="checkbox"/>	B. Boat Ramps	<input checked="" type="checkbox"/>	H. Fill	<input checked="" type="checkbox"/>	O. Marinas
	C. Road Crossings		I. Rip-Rap		P. Stormwater Management
	D. Channel Modifications/Dams		J. Vegetative Stabilization		Q. Ponds and Impoundments
	E. Utility Crossings	<input checked="" type="checkbox"/>	K. Jetties, Groins, Breakwaters		R. Maintenance Dredging
	F. Intake or Outfall Structures		M. Projects in Wetlands		S. New Dredging

**Section 3: Project Location**

7. Project Site Address: Solitudes at White Creek County:  N.C.  Kent  Sussex  
Clubhouse Road (CR 351), Ocean View, DE 19970 Site owner name (if different from applicant): \_\_\_\_\_  
Adjacent to Future Address: 30723 Peaceful Lane. Address of site owner: \_\_\_\_\_

8. Driving directions: From DNREC's Dover Richards and Robbins Building, Take US-13 South to DE RT-1 south. After the Indian Rive  
Inlet Bridge, Turn Right onto Fred Hudson Road, Left onto Cedar Neck Road, and the right onto Atlantic Avenue. After one mile turn right  
(Attach a location road map with the site indicated on the map). onto Old Mill Road and then right onto Clubhouse Road, arrive in 0.5 mi.

9. Tax Parcel Number: 134-12.00-170.00 Subdivision Name: Solitudes on White Creek

<b>WSLS Use Only:</b>		<b>Permit #s:</b> _____							
Type	SP <input type="checkbox"/>	SL <input type="checkbox"/>	SU <input type="checkbox"/>	WE <input type="checkbox"/>	WQ <input type="checkbox"/>	LA <input type="checkbox"/>	SA <input type="checkbox"/>	MP <input type="checkbox"/>	WA <input type="checkbox"/>
Corps Permit:	SPGP 18 <input type="checkbox"/> 20 <input type="checkbox"/>		Nationwide Permit #:	_____		Individual Permit #:	_____		
Received Date:	_____		Project Scientist:	_____					
Fee Received?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Amt: \$	_____		Receipt #:	_____		
Public Notice #:	_____		Public Notice Dates:	ON _____	OFF _____				

## **Solitudes at White Creek Community Marina**

### **DNREC WSLs Application - Project Description**

#### **Section 2, Item: 5.**

Solitudes on White Creek is an approved 119-unit single family home residential community currently under construction. The property is identified by Tax Map No. 134-12.00, Parcel: 170.00 and is located in an unincorporated area of the Baltimore Hundred in Sussex County, Delaware. The project fronts only the westerly bank of White Creek.

The development plan for the property provides that no lot lines will extend to the waters of White Creek, therefore no individual docks and piers will be permitted. The community dock will be situated on the common property of the Solitudes on White Creek Property Owners Association and permitted for their benefit. Water access for residents was to be provided by a community dock consisting of boat ramp and dock which would have accommodated the parallel mooring of 12 boats and 8 jet skis on floats. As a result of comments received during a public hearing for the project and DNREC, the scope of the project was reduced to minimize and avoid impacts to navigation and the overall community dock location. The facility will now consist of ten docks realigned in size mooring only a maximum of ten (10) boats and two (2) jet ski floats.

Presently a pier and dock exist on the southern shoreline of the project subject to Subaqueous Lands Lease SL-024/15. This pier will be demolished and replaced with the proposed community marina. A small existing concrete boat ramp also exists near the pier within federally regulated wetlands. This boat ramp will be removed and the 240 ± square feet area will be restored to a vegetated wetland condition. In accordance with the Delaware Department of Natural Resources and Environmental Control (DNREC) Wetland Map No.: 42, state regulated wetlands are identified on a point at the center of the site and at another area shown on the southerly west corner of the property. State regulated wetlands are not mapped at the boat ramp location or within its immediate vicinity. As such, no state regulated wetlands are impacted from the Solitudes on White Creek community marina project.

As designed, adequate depths exist along the proposed dock, -2.1 to -3.0 feet at mean low water, therefore no dredging is required for this project. In addition, the boat ramp and access piers to the dock have been located to avoid impacts to federally regulated wetlands. The project meets the 20 percent rule and that harbor line is shown on the enclosed permit drawings.

The proposed concrete boat ramp will be 16 feet by 60 feet, extending a maximum of 28 feet channelward of local mean high water. The boat ramp will be flanked with vinyl sheet pile breakwaters supported by pilings and whalers. These breakwaters will extend to the edge of the boat ramp, forming one side of the 6 feet wide piers which will access the docks parallel to the shoreline.

The dock on the east side of the boat ramp (including the frontage of boat ramp access piers) will be 130 feet long and the dock west of the boat ramp will be 235 feet long. The access piers and dock

will be supported by timber pilings on 8 feet centers. All pilings and timbers are salt-treated and all hardware is galvanized. The proposed docks are designed to berth a maximum of ten (10) small boats moored parallel along the dock. Two (2) 7 feet by 14 feet jet ski floats with jet skis are proposed to extend from the westerly dock. In total a maximum of 12 vessels will be moored at the Solitudes on White Creek Community Marina.

The community marina will be adjacent to the community clubhouse where restrooms will be provided. A stabilized access road to the boat ramp will extend from the Peaceful Lane cul de sac where parking is provided.

A 6 feet by 6 feet storage building will be constructed adjacent to the marina which will house a portable marine pump out station, trash receptacle and spill kit. Marina signage with emergency names and numbers will be located at the storage building and boat ramp. A life ring and fire extinguisher station will be located at the head of the boat ramp. A proposed Operation and Maintenance plan (O&M Plan) has been submitted with this application.

**Section 3: Project Location (Continued)**

10. Name of waterbody at Project Location: White Creek waterbody is a Tributary to: Indian River Bay

11. Is the waterbody:  Tidal  Non-tidal

12. Is the project:  On public subaqueous lands?  On private subaqueous lands?\*

In State regulated wetlands?  In federally regulated wetlands?

\*If the project is on private subaqueous lands, indicate the name of the subaqueous lands owner:

(Written permission of the private subaqueous lands owner must be included with this application).

13. Present Zoning:  Agricultural  Residential  Commercial  Industrial  Other

**Section 4: Miscellaneous**

14. A. List the name and complete mailing address of the immediately adjoining property owners on all sides of the project.  
(Attach additional sheets as necessary):  
Please see the attached list.

B. For wetlands and marina projects, list the name and complete mailing address of each property owner within a 1000 foot radius of the project. (Attach additional sheets as necessary)  
Please see the attached list.

15. Indicate the names of all representatives from DNREC and the Army Corps of Engineers who you have discussed the project with:

A. Have you had a State Jurisdictional Determination performed on the property?  Yes  No

B. Has the project been reviewed in a monthly Joint Permit Processing Meeting?  Yes  No

If yes, what was the date of the meeting? \_\_\_\_\_

16. If there is any existing fill or structures in subaqueous lands at the project site, were the structures constructed or fill placed prior to 1969?  Yes  No If no, provide a copy of any prior and/or current authorization(s) for projects at this site. If a copy is not available, provide the permit or lease number(s) if known.

SL-024/15

17. Have you applied for or obtained a federal permit for the project from the Army Corps of Engineers?

None  Pending  Issued  Denied Date: \_\_\_\_\_

Type of permit: SPGP-20, NWP 18 & 30 Federal Permit or ID #: \_\_\_\_\_

18. Have you applied for permits from other Sections within DNREC?

None  Pending  Issued  Denied Date: \_\_\_\_\_ Permit or ID #: \_\_\_\_\_

Type of permit (circle all that apply): Septic Well NPDES Storm Water

**BOAT DOCKING FACILITIES**

Any boat docking facility for more than four (4) vessels is considered a marina facility (see definitions and explanations section) and requires the applicant to complete Appendices N and O, and make application to the U. S. Army Corps of Engineers for approval.

Please make sure answers to all of the questions in this appendix correspond with information on the application drawings.

1. Briefly describe the project. (Attach additional sheets as necessary.)

The project is a community marina and boat ramp providing parallel berths for 12 boats and 8 jet skis along two (2) docks. Please see the enclosed detailed project description, Section 2, Item 5.

2. Please provide numbers and dimensions as follows:

Structure Type	Number of Support Pilings	Dimensions (Channelward of MHW or OHW)		Dimensions (Channelward of MLW- n/a for non-tidal water)		New, repair or maintain
		Width _____ ft.	Length _____ ft.	Width _____ ft.	Length _____ ft.	
Dock, Pier, Lift, gangway						
Dock (east)	32	6	130	6	130	
Dock (west)	60	6	235	6	235	
Ramp Service (pier east)	6	6	28	6	24	
Ramp Service (pier west)	4	6	26	6	20	
Freestanding Pilings	Number 0					

Mooring Buoy: How many moorings will be installed? \_\_\_\_\_  
 What will be used for the anchor(s)? \_\_\_\_\_  
 Anchor/Mooring Block Weight \_\_\_\_\_  
 Anchor Line Scope (Length or Ratio) \_\_\_\_\_  
 Water Depth at Mooring Location \_\_\_\_\_

(varies)

3. Approximately how wide is the waterway at this project site? 116'-136' ft. (measured from MLW to MLW)

(varies)

4. What will be the mean low water depth at the most channelward end of the mooring facility? 2.0'-3.0'ft.

5. What type of material(s) will be used for construction of the mooring facility (e.g. salt treated wood, aluminum, fiberglass floats, etc.) Use of creosote-treated wood is prohibited.

Salt treated timber and pilings, galvanized hardware, PVC jet ski float.

6. Circle any of the following items that are proposed over subaqueous lands:

Fish Cleaning Stations/Benches/Ladders/Water Lines/Satellite/Electric Lines/ Handrails/Other (Describe)

If any of the items are circled above, include their dimensions and location on the application drawings.

7. What will be the distance from the most channelward end of the docking facility to the edge of any natural or man-made channel? 30 ft.

8. Describe the vessels that will be berthed at the docking facility. Please draw proposed vessel locations on plans and drawings.

Make/model _____	length _____	width _____	draft _____
Make/model _____	length _____	width _____	draft _____
Make/model _____	length _____	width _____	draft _____
Make/model _____	length _____	width _____	draft _____

9. Please provide a copy of the current state registration or Coast Guard Certificate of Documentation for each motorized vessel listed above.

10. Give the number and type of each Marine Sanitation Device (e.g. MSD III, Portable toilet) that will be used on vessels to be docked at the facility. Unknown at this time.

11. Is there currently a residence on the property?  Yes  No

12. Do you plan to reach the boat docking facility from your own upland property?  Yes  No If "No", explain your proposed means of access and provide documentation of easement or documentation authorizing access if you intend to cross someone else's property.

13. Will any portion of the structure be located in privately owned underwater land (such as a pond or lagoon) owned by someone other than the applicant?  Yes  No.  
If yes, written permission of the underwater land owner must be provided with this application.

14. What is the width of the waterfront property frontage adjacent to subaqueous lands? 1,140 ft.  
Will any portion of the structure or any vessel be placed within 10 feet of your neighbor's property line?  
 Yes  No  
If yes, a letter of no objection from the adjacent property owner must be included with this application.

### BOAT RAMPS

Please make sure answers to all of the questions in this appendix correspond to information on the application drawings.

1. How many boat ramps will be constructed? 1

2. What are the dimensions of the proposed boat ramp(s)?

<u>60'</u> Length	<u>16'</u> Width
<u>8:1</u> Slope	<u>0.75'</u> Thickness

3. How many feet will the boat ramp(s) extend channelward of:

Tidal Waters: mean high water line? 28 ft.

Non-tidal Waters: ordinary high water line? \_\_\_\_\_ ft.

4. How many square feet of the boat ramp(s) will be located:

Below mean high water? 430 sq. ft.

On vegetated wetlands? 0 sq. ft.

5. Will any docking facilities be constructed alongside of the boat ramp(s)?  Yes  No  
If your answer is yes, complete Appendix A and show structure on plans.

6. What type of material(s) will be used for construction of the boat ramp(s) (e.g. concrete, timber, gravel, etc.)? Concrete ramp between vinyl sheet pile walls poured and supported by timber piles and walers.

7. Will any fill be required?  Yes  No If yes, complete the appropriate appendix.

8. Amount of material to placed? 12 cubic yards below MHW  
9 cubic yards below MLW

9. Will any dredging or excavation be required?  Yes  No If yes, complete the dredging appendix.

10. What boat ramp(s) do you now use in the area?

Not applicable.

11. Will this ramp be:  public,  commercial,  private? If public or commercial, complete Appendix N (Marinas).

**JETTIES, GROINS, OR BREAKWATERS**

\* Please make sure answers to all of the questions in this appendix correspond to information on the application drawings.

1. What type of material(s) will be used for the construction of the structure(s) (e.g. quarry stone, timber, rock gabions, sandbags, etc.)? Vinyl sheet pile supported by timber pilings and whalers.
2. How many feet will the structure(s) be placed channelward of the:
  - a. Tidal Waters: mean high water line? +/- 2 ft.  
mean low water line? +/- 23 ft.
  - b. Non-tidal waters: ordinary high water line? \_\_\_\_\_ ft.
3. How much of your project will be located:
 

channelward of mean high water? 32 sq. ft.

on vegetated wetlands? 0 sq. ft.
4. What will be the distance of separation between individual structures? 16 ft.
5. Are there similar structures in the vicinity of the project? Yes No  
If your answer is "Yes", describe the type and location(s) of the structures.
6. The structure(s) will be of: (check one)
 

\_\_\_\_\_ Low-Profile design

Continuous height
7. How many feet will the structure(s) be placed landward of the:
  - a. tidal waters: mean high water line? +/- 28 ft.  
mean low water line? +/- 23 ft.
  - b. non-tidal waters: ordinary high water line? \_\_\_\_\_ ft.
8. Will the area in the vicinity of the structure(s) be artificially nourished?  
Yes No If the answer is "Yes", complete Appendix H.
9. Approximately how many feet of shoreline have you lost over the last year?  
\_\_\_\_\_ ft. (width) \_\_\_\_\_ ft. (length) Not Applicable

Will the landward end(s) of the structure be protected from out flanking with rip-rap? Yes No If our answer is "Yes", complete Appendix

The vinyl sheet pile walls are proposed to flank each side of the boat ramp.

### PRELIMINARY MARINA SCREENING CHECKLIST

(To be submitted at least one week prior to the pre-application meeting)

\* Provide the following information and/or answer the following with regard to the proposed marina project:

- |  |   |
|--|---|
| <p>1. Applicant's (Property Owners) Name<br/>         Address: <u>White Creek at Bethany Property Owners Association</u><br/> <u>Mr. Robert Sipple, TAC Beacon 1, LLC</u><br/> <u>2500 Wrangle Hill road, Suite 101</u><br/> <u>Bear, DE 19701</u></p> | <p>Telephone Number<br/>         Home ( ): _____<br/>         Work (302): <u>373-5957</u></p> |
|--|---|

Project Name: Solitudes on White Creek Community Marina.

2. Provide an aerial photograph of the site, if available.  
     Provided in application.
3. What are the existing land uses on the site?  
     119 unit single family home residential community.
4. What are the existing land uses on adjacent properties within 1000 feet of the proposed marina or marina alteration, including the opposite shore?  
     Primarily single family residential communities.
5. Name and distance of nearest municipality.  
     Town of Millville, Delaware, 36404 Club House Road, Millville, DE 19967, 0.8 mile down the roadway.
6. Is the proposed project an open water or enclosed basin marina?  
     X Open water      \_\_\_\_\_ Enclosed basin
7. Is the marina on a creek, river, or open bay? Name of the water body?  
     White Creek
8. Indicate the number of wet slips. Proposed 12 Existing 0
9. Indicate the number of dry stack spaces. Proposed 0 Existing 0
10. Will the proposed marina or marina alteration require dredging?  
     \_\_\_\_\_ Yes X No  
     If yes, approximate the amount in cubic yards. 0 cubic yards
11. If the project requires dredging, do you own or have access to an upland site for dredged material disposal? N/A  
     \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, where is it located?
12. If not, how do you propose to dispose of your dredged material?
13. How many years of maintenance dredge spoil capacity does the spoil site possess?  
     20 Years

14. Will the proposed project require the use of any State wetlands? \_\_\_ Yes X No If yes, approximate the amount of wetlands required in acres and the intended use.

15. What is the tide range at the marina site? Normal tide 1.6 Neap tide 0.8  
 What is the source of this information?

16. What is the approximate MLW depth at the marina site? 2.1-3.1 Ft.  
 What is the source of this information?  
 Detailed sounding survey.

17. If the site includes residential development, indicate:  
 Number of units platted 119  
 Length of shoreline owned 1,140  
 Acreage of upland property \_\_\_\_\_

Indicate the number of on-site parking spaces for:

	cars	trailers	cars with trailers	oversize vehicles
Proposed	12	0	2	0
Existing	0	0	0	0

18. What utilities will be provided on or in the marina or dock area proper? Be specific, e.g. fuel, electricity, sewage pump-out, water, etc. Three (3) stations for water and electric.

19. What additional shore-based facilities are included in the proposed marina or marina alteration? Be specific, e.g., boat or engine repairs, fuel, foods, etc.  
 6 feet by 6 feet marina storage building for spill kit and portable marine pump out station.

20. Will the marina project be available to the general public? If so, on what basis?

21. Are existing public facilities, services, and transportation adequate to accommodate the project and associated development impacts? X Yes \_\_\_ No If no, please describe the upgrades required:

22. Has a market study been completed for the project? \_\_\_ Yes X No  
 If so, please attach the study report.

Maximum Twelve (12) slips for a 119 unit community is well within the level of demand based upon boating studies.

23. If no market study has been completed, please describe briefly the intended market, particularly the types and sizes of boats anticipated to use the facility.

Residents of the Solitudes on White Creek community.

**MARINAS**

Marina applicants must complete this appendix and any other appendices that may apply to the proposed project (see "List of Appendices").

Please be sure that answers to all of the questions in this appendix correspond to information on the application drawings.

1. Name of marina: Solitudes on White Creek Community Marina
2. Complete mailing address for marina: Solitudes on White Creek Community Marina  
Attn: Mr. Chris Nichols, Seascope Property Management  
17563 Nassau Commons Boulevard  
Lewes, DE 19958

Telephone Number: 302-645-2222

3. Name and complete address for Harbormaster, if applicable:

Mr. Chris Nichols, Seascope Property Management

17563 Nassau Commons Boulevard

Lewes, DE 19958

4. Check appropriate box:  New Marina  Alteration to Existing Marina

5. Number of Slips: Complete Appendix A for details of docking facilities.

	a. Wet Slips	Dry Storage Spaces
b. Existing	<u>                    </u>	<u>                    </u>
c. Proposed or Additional	<u>12</u>	<u>                    </u>

- If this is an alteration to an existing marina, please be advised that the questions that follow pertain only to the altered portion(s) of the facility.

6. Shellfish Resources: Is any part of the marina located within or adjacent to a classified shellfish growing area? This information can be obtained from the Division of Water Resources, Watershed Assessment Section (302-739-4590)

       Yes   X   No

If yes, how is the area currently classified?

       Approved Area

       Conditionally Restricted Area

       Conditionally Approved Area   X   Prohibited Area

       Restricted Area

7. Submerged Aquatic Vegetation (SAV): Are any SAV beds located within the marina basin or adjacent areas?        Yes   X   No

8. Critical Habitats: Is the marina located within or adjacent to an area classified as a critical habitat by the Department's Division of Parks and Recreation? Critical habitat areas are those that are included in the Natural Areas Inventory, or that provide habitat for species included in the State Endangered Species Act (7 Del. C., Chapter 6). To obtain the locations of these areas, contact the Division of Parks and Recreation at (302) 739-5285.  Yes  No

9. Dredging and Dredged material Disposal: Complete Appendices R and/or S.

10. Shoreline Protection Structures: Complete appropriate Appendices.

11. Water Supply: Describe the existing or proposed water supply facilities for the project.

Public water system. Identify: Tidewater Utilities

Private well. If existing, include the DNREC Well Permit Number: \_\_\_\_\_

If there are plans to construct a new well, a permit must be obtained from the Department's Water Supply Section prior to well construction.

12. Wastewater Facilities:

a. How many restroom facilities are planned for the marina? 1

If none, please explain:

b. How will the wastewater from the facility be handled?

Public sewer, identify: Sussex County

On-site septic system

Other, describe:

c. Identify the permit numbers for any treatment, storage or disposal permits that have been obtained for the proposed wastewater facilities, including name and permit number for any waste transporters who will be transporting wastewater or septage.

Not Applicable.

d. If permits for the wastewater facilities have not yet been obtained, have permit applications been submitted?  Yes  No

If Yes, show the date and to whom the application was mailed. If no, describe all proposed plans for wastewater handling. Attach additional sheets as necessary.

Not Applicable.

13. Parking:

How many parking spaces will be provided? 12

Does the proposed parking plan conform to:

Local planning codes or requirements; (Contact the County Planning Department and/or local municipal government offices for this information).  Yes  No

The 0.5 spaces/slip rebuttable presumption from the Marina Regulations  Yes  No

If no, please explain:



18. Fire Protection Systems: Describe the fire protection systems that are proposed for the facility. Indicate whether local fire codes or National Fire Protection Association (NFPA) standards have been used in choosing and designing the systems. Attach additional sheets as necessary.

Hydrant located at the cul de sac.

19. Life Safety Equipment:

- a. For alterations to existing marinas: Does the alteration involve the addition of new water-based structures?  Yes  No If yes, complete 20 B. If no, skip to question 21.
- b. How many floatation devices will be provided around the marina and how far apart will they be located? Floatation device will be located at the boat ramp. The distance will be 280 feet maximum.

20. Fish Waste:

Will fish cleaning stations be provided?  Yes  No

If yes, how many? \_\_\_\_\_ (Be sure to show their location on the engineering plans).

Will the marina provide a live bait concession?  Yes  No

21. Piers and Docks: Complete Appendix A.

22. **Drawing Requirements:** At a minimum, all marina applicants must submit at least the following drawings:

- a. Elevation or Section View
  - b. Vicinity Map
  - c. Plan View
- General Information for All Drawings: For all major structures, the structural dimensions and distance from the nearest property line, survey marker or permanent landmark should be shown.
  - Wherever possible, identify the materials used in construction. If dredging or filling is involved, show the volume and type of materials to be moved, and the grade to be used.
- a. Elevation or Section View

The elevation or section view includes the following, as applicable: (check those which apply). Pre-checked items must be included.

Mean high and low water lines;

Construction details for all water-based structures (e.g. piers docks, pilings);

Construction details for all bulkheads, rip-rap and other shoreline protection structures;

Intake and outfall structures

Boat Ramps

Channel or basin modifications (proposed dredging areas)

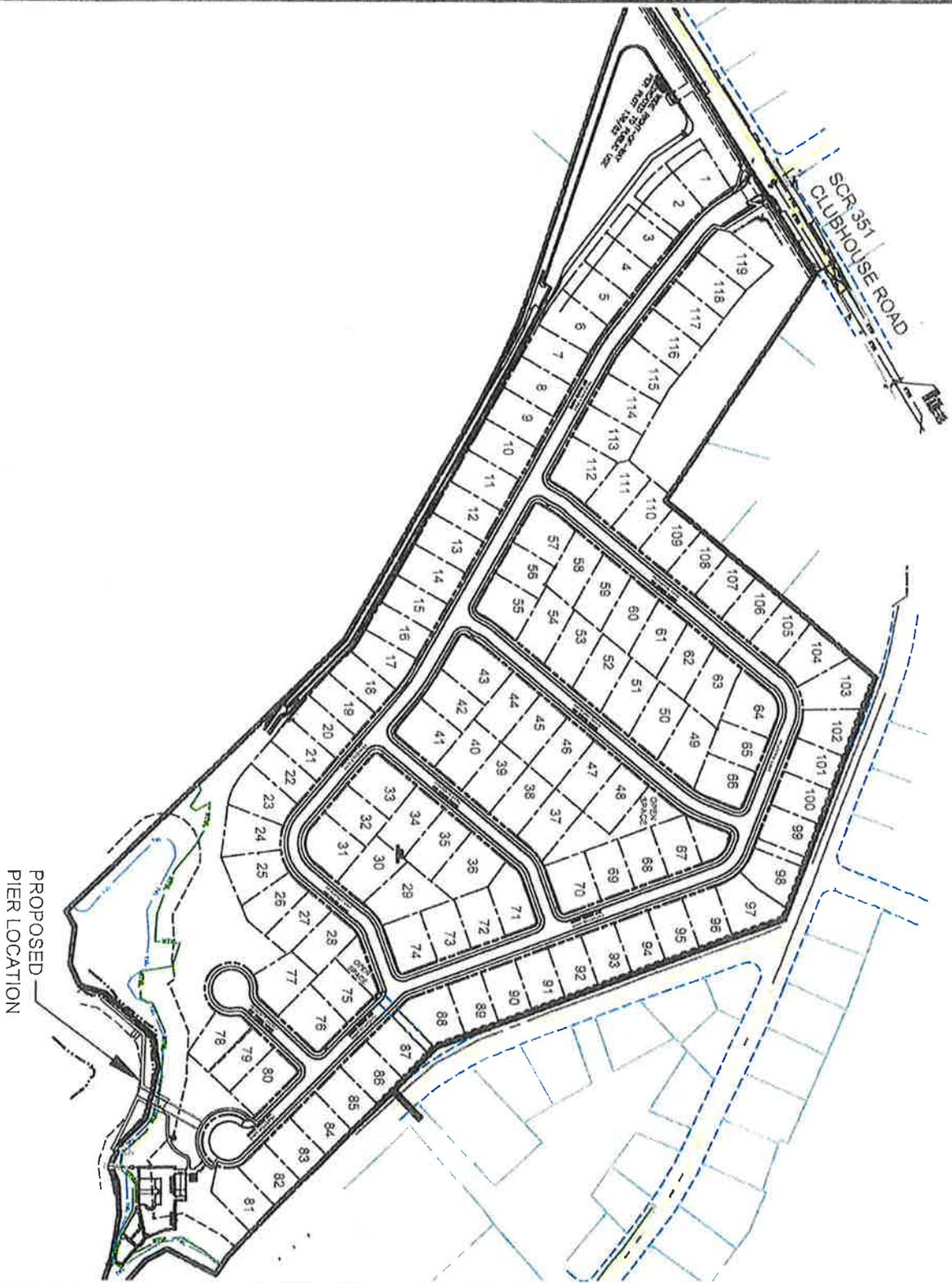
Other

b. Vicinity Map

## c. Plan View

The plan view should be prepared on 8 1/2" x 11" paper, and in a standard blue print size and format, and contain the locations of the following features, as applicable (Check all those which apply to the project and include these items on the plan view drawing):

- Property boundaries
- Shoreline
- Mean high and low water lines
- Direction of river flow/ebb and flow of tide
- Proposed channel
- Navigation Aids
- Piers, docks, pilings, bulkheads, moorings, anchorages, jetties, groins, breakwaters and other water-based structures
- Slips (Wet)
- Slips (Dry)
- Boat ramp(s)
- Buildings, other structures (identify each)
- Boat storage areas/facilities
- Boat maintenance area(s)
- Extent of roof coverage (e.g. over maintenance areas, boat storage areas, etc.)
- Roadways (identify surface, e.g. asphalt, gravel dirt, etc.)
- Parking areas (identify surface, e.g. asphalt, gravel, dirt, grass, etc.)
- Maintenance materials storage areas(s)
- Public telephone(s)
- Public restroom(s)
- Fish cleaning station(s)
- Life safety equipment station(s)
- Fuel dispensing pump(s) underground storage tank
- Septic tank
- Sewer connection/wastewater collection system
- Water supply well
- Portable fire extinguisher(s), fire hydrant(s)
- Spill containment equipment storage areas(s)
- Trash receptacle(s) waste oil - other waste receptacles
- Stormwater management facilities
- Compensation area for wetlands
- Other



PROPOSED  
PIER LOCATION

PIER LOCATION PLAN

SCALE: 1"=300'

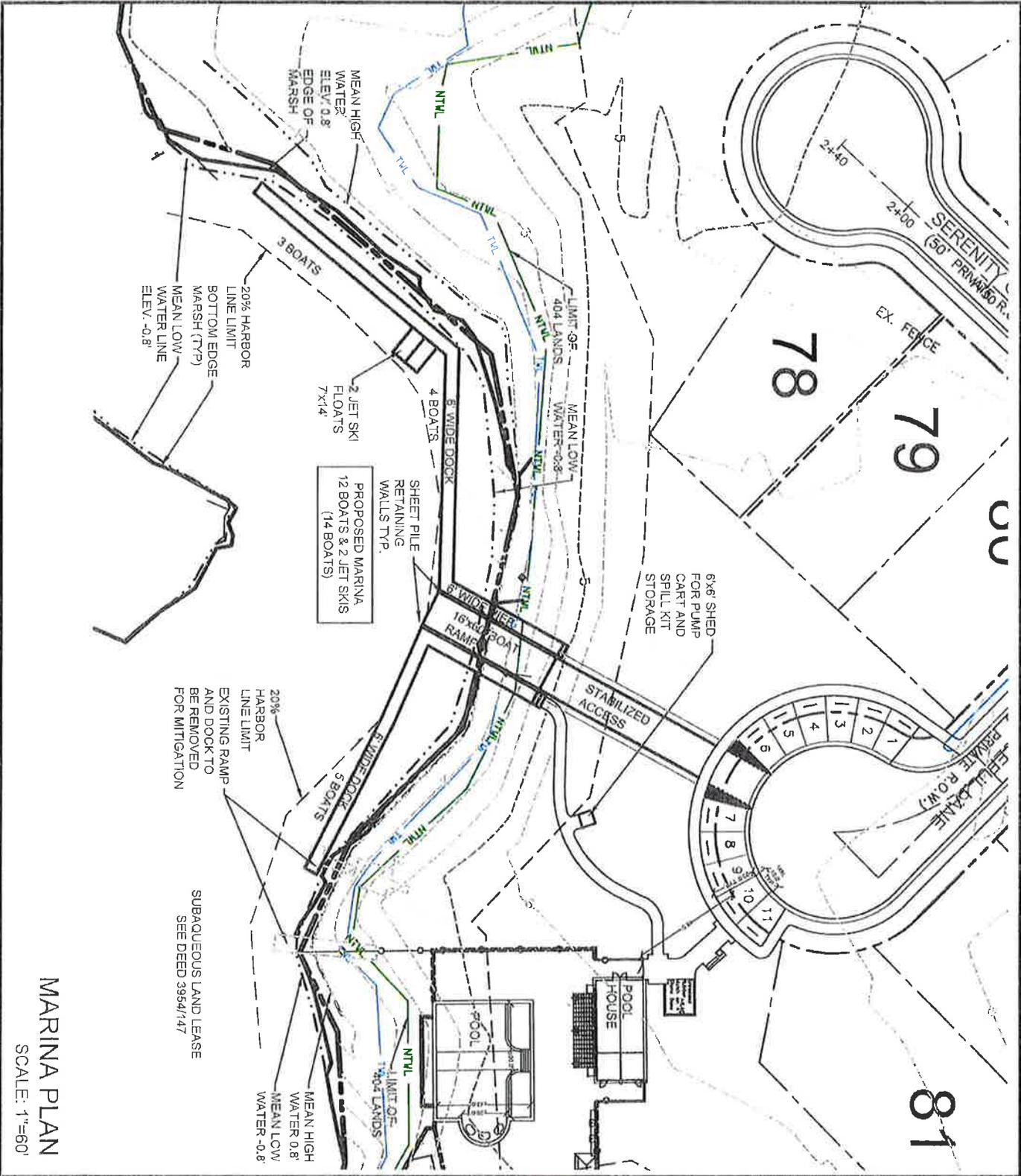
SITE PLAN  
**SOLITUDE ON WHITES CREEK**  
 SCR 351 - CLUBHOUSE ROAD  
 BALTIMORE HUNDRED SUSSEX COUNTY DELAWARE

**LAND DESIGN**  
 Surveying / Landscape Architecture  
 Planning and  
 Development Consultants

22000 Route 100  
 New Berlin, PA 17054  
 717-353-1111 FAX 717-353-1112  
 landdesign.com

REVISIONS:

DATE	10/4/18
DRAWING NO.	
SHEET NUMBER	
REVISION	2



MARINA PLAN  
SCALE: 1"=60'

DATE	10/4/18
REVISION	3

MARINA PLAN  
**SOLITUDE ON WHITES CREEK**  
 SCR 351 - CLUBHOUSE ROAD  
 BALTIMORE HUNDRED SUSSEX COUNTY DELAWARE

**LAND DESIGN**  
 Surveying / Landscape Architecture

2024-2025

NO.	DATE	DESCRIPTION

REVISIONS:





## **APPENDIX “B”**



EXHIBIT  
tabbles  
Ex. #4 (LHW)



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

WETLANDS & SUBAQUEOUS  
LANDS SECTION

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

Technical Response Memorandum

To: Lisa A. Vest, Hearing Officer

Through: Virgil Holmes, Director, Division of Water *UH 8/29/18*  
Steven Smaler, Environmental Program Administrator, Division of Water *MS*  
Tyler Brown, Section Manager, Wetlands and Subaqueous Lands *TCS*

From: Matthew Jones, Environmental Scientist, Wetlands and Subaqueous Lands Section *MRS*

Date: August 15, 2018

Subject: TAC BEACON 1, LLC (Solitudes on White Creek), Marina and Subaqueous  
Lands Lease Application

---

**INTRODUCTION**

On November 16, 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 TAC BEACON 1, LLC to construct a minor marina by constructing a 20 slip marina consisting of 12 boat slips, 8 jet-ski slips and a single lane boat ramp in White Creek located at the Solitudes on White Creek community, Ocean View, Sussex County, Delaware. The proposed project is subject to the requirements of the Subaqueous Lands Act (7 Del C., Chapter 72) and the Regulations Governing the Use of Subaqueous Lands, and the Marina Regulations and (7 Del C., Chapter 60).

The project was placed on a 20 day public notice on March 7, 2017. During the public notice periods, the WSLs received more than 100 written comments against the project. The objections claimed that the waterbody is already inundated with boat traffic which leads to unsafe conditions for both motorized and non-motorized water dependent activities such as boating, paddle-boarding, canoeing and kayaking. In addition, concerns were expressed that the construction of the marina could be considered the takings of public subaqueous lands. The comments also included: land disturbance activities such as tree removal, loss of habitat for nesting birds, impaired boaters leaving the proposed tiki bar, light pollution, and to enforce a no wake zone along the creek.

The WSLs also reviewed the permitting history and found that an existing Subaqueous Lands Lease was issued to Land-Lock, LLC on December 12, 2011 to construct a 4 foot wide by 14 foot long pier and a 6 by 12 foot long fixed dock in White Creek, Delaware. The Subaqueous Lands Lease was transferred to TAC BEACON 1, LLC on April 24, 2015. Based on the public responses received during the public notice period, the WSLs determined that it was in the public's best interest to hold a public hearing. The announcement for a public hearing was placed on a 20 day public notice on May 3, 2017. After advertisement of the public hearing, there were greater than 20 letters of objection to the project.

The applicant, TAC BEACON 1, LLC originally proposed to remove existing structures previously authorized by SL-024/15 & SL-021/11 and to construct a 20 slip minor marina consisting of one 6 foot wide by 155 foot long dock, one 6 foot wide by 280 foot long dock, one 6 foot wide by 45 foot long pier, one 6 foot wide by 40 foot long pier and a 16 by 60 foot long boat ramp of which 480 square feet will be channelward of the Mean High Water Line in White Creek, the Solitudes on White Creek community, Ocean View, Sussex County, Delaware.

The public hearing was held on June 6, 2017. The public hearing was attended by WSLs staff, the applicant's representatives, and individuals from the public. The applicant's consultant of Environmental Resources, Inc., Edward Launay, gave a presentation. He explained the background of the project and that The Solitudes on White Creek community will consist of 119 residential homes in which all residents will have common riparian rights to 1,140 linear feet of shoreline along White Creek. The Solitudes on White Creek HOA will own the riparian buffer adjoining White Creek, eliminating the possibility of any individual dock approvals within the community. An existing boat ramp on the east side of the property will be removed and approximately 280 square feet will be restored as wetlands as part of the project.

He explained that there was demand from the community for the marina and how the application meets all regulatory requirements and minimizes the amount of structure over subaqueous lands by constructing one facility for 119 single-family homes.

Mr. Launay submitted the following exhibits: an illustrated drawing of the proposed structures and the boundary's as they pertain to DNREC WSLs regulations; a certified bathymetric survey; United States Department of the Interior, Fish and Wildlife Service documents; as well as the DNREC Natural Heritage Program findings on state threatened or endangered species.

Mr. Launay also addressed concerns voiced by objectors to the project. Regarding the issues with navigation, he stated that there are five existing piers moving upstream from the parcel towards White Creek Manor Marina. The distances of those five piers as measured from the ends of the structures to the opposite shoreline are 88 feet, 133 feet, 116 feet, 99 feet and 120 feet respectfully. The proposed community structure varies from 100 to 120 feet, which is consistent with the existing navigation channel. Additionally, he explained that elsewhere on White Creek, it can be found that the distance between docks and shorelines is as little as 50 feet in terms of navigational channels.

Additionally, Mr. Launay also spoke about the design of the marina and how it complies with the State of Delaware subaqueous land regulations. He referenced that DNREC does not allow an encroachment, for navigation purposes, of more than 20 percent of the channel width measured from the mean low water line to the mean low water line on the opposite shoreline. He addressed that the Bathymetric survey (exhibit 2) which was completed by Cypress Surveys LLC, and that the deeper part of the creek was within the center of the creek, which is actually away from the proposed docks and piers.

He addressed that there would be no impacts to state-regulated wetlands and that the existing boat ramp was going to be removed and restored with approximately 280 square feet of wetlands. He addressed that there were no state or federally endangered or threatened species impacted per the United States Department of the Interior document from the U.S. Fish and Wildlife Service and the Delaware Division of Fish and Wildlife-Heritage Program. Mr. Launay stated that the project was fully approved and permitted by Sussex County Planning and Zoning.

After Mr. Launay concluded, the Hearing Officer, Robert P. Haynes, presented the exhibits of the public record from the Department. Following Mr. Haynes presentation of the exhibits, fourteen individuals spoke in opposition to the proposed marina.

The concerns expressed were centered primarily on the issue of boating safety. Many protested against additional boat traffic, concerns about running aground, unsafe conditions for non-motorized water dependent activities and the enforcement of no-wake zones and potentially impaired boaters leaving the proposed tiki bar. Additional concerns were expressed regarding economic development versus environmental sustainability. Many protested against overstressing the environment and those that live along White Creek in various communities, many for over several decades, spoke of the many negative changes they have perceived in occurrences of wildlife and in water quality over the years. Lastly, they expressed concerns about the takings of public subaqueous lands for profit and the potential for light pollution. Mr. Haynes concluded by explaining the next steps in the process and adjourned the hearing shortly thereafter.

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

After the Public Hearing on June 6, 2017, the consultant contacted WSLs to request an on-site meeting with WSLs staff to discuss a realignment of the proposed structures in an attempt to address concerns raised during the hearing and to address the concerns the Department expressed prior to the hearing. WSLs staff met on-site with the applicant and the consultant on July 18, 2017 to discuss the realignment and minimization of the proposed marina. The overall design of the marina was reduced by realigning the proposed structures by decreasing the slip capacity from 20 to 12 slips which consist of 10 boat slips and 2 PWC slips, bringing the entire structure landward, shortening the proposed service piers, shortening the two proposed floating docks from 155 to 130 feet in length on the east side and from 280 to 235 feet in length on the west side and minimization of the boat ramp by decreasing the footprint by 32 square feet. These changes overall decreased the channelward encroachment while still accommodating the request for a minor marina. The total square footage was reduced by approximately 1,662 square feet channelward of the Mean High Water Line and 1,052 square feet channelward of the Mean Low Water Line. The new design, at the applicants' request, is within the same limit of disturbance as originally proposed but impacts far less subaqueous lands and addresses major navigational concerns. The WSLs supports the new design since the original application with greater impacts was designed to meet regulatory requirements and current WSLs guidelines; the applicant has decided to reduce the impacts to address the concerns as listed above.

### **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 prove to the Department that the requirements of these Regulations have been met; and if the granting of any permit, lease or approval will result in loss to the public of a substantial resource, or that the loss has been offset or mitigated. The Department's regulatory evaluation and the public comments 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 Impact, Section 4.7 - Environmental Considerations and Section, 4.8- Requirements for all Structures, 4.9 - Boat Docking Facilities.

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

All proposed activities within public subaqueous lands, channelward of the mean low water line, require a Subaqueous Lands Lease from the State of Delaware. When determining if an applicant should occupy those public lands, the Wetlands and Subaqueous Lands Section considers the

potential effect on the public and the extent to which the public would benefit or suffer detriment from the project. The public use impacts most relevant to the proposed project are discussed in Sections 4.6.1, 4.6.3, 4.6.5, and 4.6.6 below.

**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.**

White Creek is public subaqueous lands and is available for public use. The primary users are private property owners adjacent to White Creek, one major community marina, multiple lagoon communities and the general public participating in boating, watersports, fishing, and crabbing. The proposed facility would be located within State waters of White Creek, and requires a lease from the State of Delaware. Under Section 4.9 Boat Docking Facilities, paragraph 4.9.2.5 states: "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 natural features, 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 proposed structure is within the 20 percent of the width of the waterbody. In order to accommodate the concerns addressed during the Public Hearing, the applicant decided to decrease the extent of the channelward encroachment of the proposed docking facility by reducing the number of slips from 20 to 12 boat slips to allow boat traffic to adequately pass along the navigable portion of White Creek. Based on the bathymetry provided, the proposed distance channelward of the mean high water appears appropriate to meet the navigational needs of the 12 slips.

Additionally, the closest private docking facility is located south of the marina and is over 150 feet away from the proposed expansion. As detailed below, Section 11.4.5 of the Marina Regulations further addresses public use impacts associated with navigation and vessel traffic. White Creek is already a publically used waterbody; therefore, it is not anticipated that there will be any significant adverse effects on navigation with the addition of 12 more boats.

During the public notice period, private waterfront owners along White Creek objected to the project, stating that light pollution from the proposed marina facility would impair the aesthetic enjoyment of the creek and requested that improvements be made. In order to address their concerns, the draft Subaqueous Lands Lease and Marina Permit includes a special condition to minimize light pollution and also requires a plan to implement the minimization of light pollution in the Operations and Maintenance Plan for the marina.

Although objectors to the project protested how boaters contribute as a noise nuisance; this is not something the WSLS can take action on since the creek is available for public use and would limit others' enjoyment of the natural resource.

**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's primary objective and purpose is to address the requests of the community in terms of boat slip availability and water access. The consolidation of vessel facilities into a marina is considered a minimization of possible activities in public subaqueous lands and a reduction of overall environmental impacts when compared to the alternative of numerous individual structures along the available shoreline.

The applicant is practicing avoidance to a certain degree by eliminating the opportunity or ability for any additional structures to impact public subaqueous lands. If no impacts occur Solitudes on White Creek residents would also have to transport their motorized vessels before and after each use to a public boat ramp with the closest being Holts Landing State Park which is approximately 3.6 miles northwest of The Solitudes on White Creek community, or moor their vessels at previously approved private marinas.

**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.**

Solitudes on White Creek is a community consisting of 119 single family homes. They are applying for one structure to serve the community, thus minimizing the potential impact on the adjacent subaqueous lands from multiple structures.

The applicant has practiced avoidance as described above in Section 4.6.5 and has further proposed minimization of the channelward encroachment of the marina. The scope of the overall proposed design of the marina was minimized by realigning the structures as described above.

**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 at the docking facility and the discharge of fish waste into waters adjacent to 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 and additional wake, 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 the addition of 12 boats should not have a significant adverse impact on the environment.

**Section 4.7.5 Other Considerations**

**4.7.5.2 The degree to which the project incorporates sound engineering principles and appropriate materials of construction.**

The structure is proposed to use CCA treated lumber and will be constructed to typical standards by a marine contractor, as is common for the majority of the structures in the vicinity.

**4.7.5.3 The degree to which the proposed project fits in with the surrounding structures, facilities and uses of the subaqueous lands and uplands.**

There are multiple docks located along White Creek. Most of the docks observed within the vicinity of the proposed marina were fixed and the approximate average size is 5 feet wide by 40 feet long; although, most structures are for individual lots or community crabbing and fishing piers. Along White Creek, there is a major marina just upstream of the proposed marina, as well as several large lagoon systems which include several berthed motorized vessels downstream of The Solitudes on White Creek community.

**Section 4.8 Requirements for all Structures**

**4.8.4 Structures shall not interfere with navigation, public, or other rights.**

The proposed structures meet the requirements stated in the regulations for proper navigation (see 4.6.3 above). The structure does not interfere with the public or other rights in regards to the use of the adjacent properties or White Creek.

**Section 4.9 Boat Docking Facilities**

**4.9.2 - General Siting Considerations: Siting of boat docking facilities shall be evaluated on site specific conditions including, but not limited to, location of navigational channel, proximity of existing structures, aquatic habitats, and width and orientation of waterbody. The following criteria will be weighed and balanced when evaluating the siting of boat docking facilities.**

The applicant owns approximately 1,140 linear feet of waterfront property in which the community wants to utilize a portion as a community marina with the following water dependent structures: a boat ramp and the proposed 12 slip marina docking facility. Navigation issues directly adjacent to the proposed marina should be minimal since the closest docking facility is over 150 feet away. In addition, a bathymetric survey done by Cypress Surveys, LLC indicated water depths at the existing dock ranged from approximately -2.1 to 3.0 feet NAVD 88 in elevation. Bottom depths increase uniformly extending 50 feet channelward of the shoreline measured from mean low water to nearly elevation -5.4 feet NAVD 88. The deepest water exists at the center of the creek, depths then decrease to the opposite shoreline to -2.0 feet. The community dock facility borders a navigable channel, however, the proposed facility has been designed to stay within the confines of the 20 percent rule established by DNREC. Therefore, the project will not adversely impact boat navigation or the existing navigable channel of White Creek. Considerations for siting of the boat docking facility are discussed further in Sections 4.9.2.2, 4.9.2.5, 4.9.2.7 and 4.9.2.8 and 4.9.2.13 below.

**4.9.2.2 - Structures should be constructed to avoid dredging or filling, with minimal impact on aquatic vegetation and wetlands, and without dead-end or poorly flushed lagoons.**

As reasoned by the applicant, in order to facilitate navigational ingress and egress at all stages of the tide and so the floating portions of the structure do not lie on the substrate of the creek at low tide, the applicant is proposing to realign the marina to reduce navigational impacts which brings the docking facility landward. Based on the bathymetry submitted, the current depth range is from -2.0 to -5.4 NAVD 88 feet below mean low water. There is sufficient water for the proposed structure and no dredging is taking place.

In addition, as specified in the environmental siting considerations of the Siting & Design Study required by the Marina Regulations, there is no submerged aquatic vegetation on-site, the benthic community is degraded and the waterbody is mapped as being prohibited for shellfishing.

**4.9.2.5 - ...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 located on a naturally sinuous waterbody so a determination from mean low water can be made from various angles resulting in numerous waterbody widths. For example, the width of the waterbody could be measured based on the orientation of the docking structure, the narrowest location that would restrict vessel traffic, the channelward extension from each individual pier for a marina or any other variation. The re-designed/reduced structure addresses all potential navigational issues and no portion of the structure could be construed as extending more than 20 percent the width of the waterbody.

**4.9.2.6- Docks, mooring, pilings, or other structures should be located a minimum of ten (10) feet from a navigation channel.**

The proposed 12 slip marina is located a minimum of ten (10) feet from a channel. The channel is not a state or federal channel but does provide navigability for boats accessing White Creek

and Indian River Bay. The state navigation channel ends at navigational aids 19 (G) & 20 (R) which is just around the bend from the proposed marina. Based off the bathometric survey and physical observations the unmarked channel is more than 10 feet from the proposed docking facility. On April 17, 2017 Matthew Jones, Steven Smailer, and Tyler Brown from the WSLs visited the site via boat and marked the outside perimeter of the proposed marina and concluded the structure was greater than 10 feet from the unmarked channel, the deepest area of White Creek, and that no vessels would be moored within the channel. WSLs did have concerns, during the site visit, with the overall length of the floating dock and the channelward encroachment in relation to water depth and minimization, as did the majority of the public. After the hearing the length of the dock was reduced and the structure was shifted landward eliminating the WSLs's concern of affecting the navigation channel.

**4.9.2.7 - Docks and piers should extend out from the shoreline far enough so as to eliminate need for dredging and filling, and provide sufficient height to allow light to penetrate to vegetation underneath and alongside.**

In evaluating the conditions of the site, the upper reaches of White Creek are shallow; although the proposed design has adequate water for berthing 12 vessels and does not require dredging.

### **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 marinas that are proposed to be constructed in subaqueous lands. The burden is on the applicant to prove to the Department that the requirements of these Regulations have been met; and if the granting of a permit will result in loss to the public of a substantial resource, or that the loss has been offset or mitigated. The Department's regulatory evaluation and the public comments 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, attention was focused on the Sussex County Revised Final Subdivision Plan and the Preliminary Amenities Site Plan for the Solitudes on White Creek. The Sussex County Planning and Zoning Commission approved the revised final subdivision plan for Solitudes on White Creek (2005-29) on May 12, 2016. Additionally, on April 20, 2017, the Planning and Zoning Commission approved the Preliminary Amenities Site Plan for the Solitudes on White Creek which included the proposed marina. As stated in the

letter dated April 26, 2017 from the Planning and Zoning Commission, "*The Final Amenities Site Plan may be endorsed by staff. Permit approval from the Army Corps of Engineers and/or DNREC Wetlands and Subaqueous Lands are required prior to issuance of building permits.*" This plan references "proposed boat docks/boat ramp renovation". The WSLS recognized that the conditions of the Site Plan didn't include any specific reference to a "marina"; although, the conditions didn't prohibit the mooring of boats and the County-approved plans showed two (2) floating docks, two (2) piers, two (2) jet ski docks and one boat ramp consistent with those provided in the Marina application. In order to finalize the Amenities Site Plan, the County would need copies of DNREC and the Army Corps of Engineers permits along with an application for a county building permit and no other action would be needed.

**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 at the north end of the Assawoman Canal at White Creek obtained from the Delaware Environmental Monitoring and Analysis Center (DEMAC) as well as water quality data collected by Environmental Resources, Inc. Although the water quality data also included information regarding 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 the United States Fish and Wildlife Service, 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. 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.

### **11.4 Planning and design requirements**

The S&D Study also explored planning and design siting considerations as required. The proposed marina is to be located on White Creek which provides natural flushing. The shoreline is primarily stabilized by vegetative wetlands. The applicant addressed the daily operations of the marina by submitting an Operations and Maintenance Plan for approval.

A detailed bathymetric survey for water depths was conducted at the site. Water depths at the existing dock range from approximately -2.1 to 3.0 feet NAVD88 in elevation. Bottom depths

increase uniformly extending 50 feet channelward of the shoreline measured from mean low water to nearly -5.4 feet NAVD 88. The deepest water exist at the center of the creek, depths then decrease to the opposite shoreline to -2.0 feet. The width of White Creek between mean low water lines at the existing dock location is on average 120 feet to the opposite shoreline. The shoreline at the site is primarily stabilized with vegetative stabilization. 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.

#### **11.4.5 Vessel Traffic and Navigation**

**11.4.5.1 - Marinas shall be designed to minimize adverse effects on the existing public and private use of waters of the State. This includes applications for mooring sites (permanent or temporary), speed or traffic reductions, or any other device, either physical or regulatory, that may cause the use of State waters to be restricted.**

As discussed in Section 4.6.3 above, White Creek is public subaqueous lands and the waterfrontage is largely developed for residential land use. The primary concerns from private waterfront property owners along White Creek are public use impacts associated with vessel traffic and navigation. Multiple objectors to the project stated their belief that the waterbody is currently inundated with boat traffic which leads to unsafe conditions for water dependent activities such as boating, paddle-boarding, canoeing and kayaking. The upper reaches of White Creek are shallow, with most of the vessels utilizing the navigation channel for traveling to other areas of the Inland Bays. While other recreational users take advantage of the shallowness of the creek for non-motorized water dependent activities. This leads to a recreational water use conflict that has the potential of restricting use of State waters based on safety concerns of wake energy from vessels traveling through the channel at high speeds. However, even though slow no wake signs are not present along this stretch of White Creek, the vessels traveling around the proposed marina should be traveling at low speeds which should not create significant wake energy. A “slow, no wake speed” is considered as the slowest speed at which it is still possible to maintain steering; the vessel should produce the minimum possible wake at this speed (typically less than 5 mph). Additionally, it is unlawful to operate a watercraft at greater than “slow, no wake speed” if within 100 feet of: another vessel, any shoreline where “slow, no wake” signs have been placed by the DNREC, floats, docks, or boat launching ramps, marked swimming areas and persons in the water and anchored, moored or drifting vessels. The objectors requested to implement a no wake zone along this portion of White Creek. However, the management of vessel speed is under the jurisdiction of DNREC, Fish and Wildlife Natural Resource Police. The proposed marina inherently will reduce the potential acreage for recreational use which adds to the issue of crowding and congestion. This in turn has the potential for increased risks of collision or other unsafe conditions. However, allowing the construction of a 12 slip marina does not necessarily mean there will be 12 more vessels using the waterbody since there is be a boat ramp on the premises and on other properties in the area as well. The use of the boat ramp by homeowners in the community adds an untold number of vessels to the water.

**11.4.5.2 - New marinas must be sited and/or designed, to the maximum extent practicable, to afford adequate protection against wakes caused by vessel traffic.**

Multiple objectors to the project blame vessel wakes from users of other communities, marinas and private residences as the main cause of shoreline erosion on their private waterfront property. Although this is a valid concern, shoreline erosion is influenced from multiple sources of both human and natural means. A shoreline is a dynamic system resulting in erosion and accretion of sediments by natural coastal processes such as wind, waves, storm energy and movement of ice. Although having a marina would add more vessels and therefore potentially more wake energy; it is difficult to quantify just how much cost is added to private waterfront owners aside from the natural processes that takes place on a shoreline.

**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 regulatory requirements by including information on the marina layout, the disposal of waste material, emergency operations, rules and regulations for marina users, and other items. Furthermore, the marina will be providing a portable marine pumpout station for the disposal of vessel sewage. The final O&M plan must include a plan for light pollution (as discussed in Section 4.6.3 above), at the marina. Pending associated subaqueous and marina authorizations for the construction activity, the final O&M plan must be submitted within six months of issuance and thereafter must be re-submitted for periodic re-approval every four years.

**CONCLUSION**

The WSLS finds that the activity described in the application for the Subaqueous Lands Lease and Marina Permit by TAC BEACON 1, LLC, Solitudes on White Creek, including installation of a community structure, 12-slip marina, and boat ramp complies with the Regulations administered by the WSLS. The applicant has applied for one structure to serve the entire community which the WSLS views as a positive aspect of the project when compared to multiple individual structures, the developer designed the waterfront community to only allow water access from one location. Single family homes are designed to be landlocked, preventing the construction of individual boat docking facilities. The applicant addressed most of the public's concerns before and after the public hearing by amending their bylaws, reducing the number of vessels to be moored and a reduction and realignment of the structure along White Creek. Additionally, the structure dimensions are consistent with the applicable regulations and guidance documents and have been designed to minimize encroachment into navigable waters.

In particular, there were concerns over vessel traffic and public safety and the potential for water use conflicts between non-motorized water dependent activities and vessels utilizing White Creek. Determining the carrying capacity of a waterbody in relation to recreational use and safety is an important consideration when evaluating whether public use of State waters is restricted.

In order to address the above referenced concerns, the following special condition is included in the draft Marina Permit and draft Subaqueous Lands Lease: *“Due to navigational concerns addressed during the public process, no further marina expansion shall be authorized at The Solitudes on White Creek by the Department of Natural Resources and Environmental Control”*.

Furthermore, the proposed activity provides water access without directly impacting any of the adjacent State-regulated tidal wetlands which make up approximately one third of the site. The applicant has practiced avoidance of the adjacent wetlands and is proposing to create a small area of wetlands where the exiting boat ramp is located.

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 authorizations 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  
FAX (302) 739-6304

TAC Beacon 1, LLC  
c/o: Robert Sipple  
2500 Wrangle Hill Road, Suite 101  
Bear, DE 19701  
Tax Parcel: 1-34-12.00-170.00

Marina Permit: MP-455/16  
Associated Lease: SL-455/16  
Associated O&M Plan: OM-455/16  
Date of Issuance:  
Amended Date: N/A

### MARINA PERMIT

#### GRANTED TO:

**TAC Beacon 1, LLC**

#### TO OPERATE A TWELVE (12) SLIP MARINA WITH THE FOLLOWING STRUCTURES:

- A 6 foot wide by 130 foot long floating dock (east)
- A 6 foot wide by 235 foot long floating dock (west)
- A 6 foot wide by 28 foot long courtesy dock with associated wing wall (east)
- A 6 foot wide by 26 foot long courtesy dock with associated wing wall (west)
- Two (2) 7 foot wide by 14 foot long floating PWC docks
- A 16 foot wide by 28 foot long concrete boat ramp

#### LOCATED:

**In White Creek,  
The Solitudes of White Creek Community Marina,  
At the terminus of Peaceful Lane,  
Ocean View, 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. 2019, to operate the above-referenced marina in accordance with the approved plans (6 sheets) as approved on \_\_\_\_\_ as authorized by Secretary's Order No. \_\_\_\_\_, and the application dated November 14, 2016 and received by the Department on November 16, 2016, with subsequent information received on February 16, 2017, April 26, 2017, June 8, 2017, August 17, 2017 and October 12, 2017.

*Delaware's good nature depends on you!*

WHEREAS, TAC Beacon 1, LLC, owner(s) of certain adjoining lands to the White Creek and an adjacent lagoon, has applied for permission to utilize the indicated structures for private use for the residents of The Solitudes on White Creek 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 twelve (12) slip marina for the residents of The Solitudes on White Creek, 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-455/16; and Operations & Maintenance Plan No. OM-455/16.

**The Marina Permit shall not be considered valid until the associated Subaqueous Lands Lease SL-455/16 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. Marina Expansion:**

Due to navigational concerns addressed during the public process, no further marina expansion shall be authorized at The Solitudes on White Creek by the Department of Natural Resources and Environmental Control.

#### **4. 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.

#### **5. Vessel Mooring Locations:**

Vessels may only be moored at the designated slips on the approved plans. There shall be no other offshore mooring or anchoring of vessels in the vicinity of the marina.

**6. Floating Dock:**

The two (2) 7 foot wide by 14 foot long floating PWC docks shall only be used for personal watercrafts.

**7. Operations and Maintenance Plan**

The marina shall be operated and maintained in accordance with the approved Marina Operations and Maintenance Plan OM-455/16 as revised on August 17, 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 3 years thereafter. Failure to maintain an approved Operations & Maintenance Plan shall constitute reason for this Marina Permit being revoked.

**8. Minimize Light Pollution**

The marina shall reduce light pollution in order to not infringe upon the rights of the public interest on the aesthetic enjoyment of White Creek. A plan to minimize light pollution shall be included in the submission of the final O&M Plan for approval. A variety of methods can be used such as installing reflectors instead of lights, by installing lights that illuminate toward the ground instead of upwards, or by installing opaque shields on light fixtures.

**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. Channelward Encroachment**

No portion of the structures authorized herein shall extend more than 20 percent the width of the waterbody as measured from mean low water at that location.

**12. Corps of Engineers Permit:**

The work authorized by this permit 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.

**13. County Approval**

A copy of the County building permit and a current letter from an official of the Sussex County Planning and Zoning, stating the acceptance of the marina plans, shall be submitted for WSLs review before any construction activity begins on the said property. If Sussex County denies a building permit the marina permit shall be revoked.

IN WITNESS WHEREOF, I, Tyler Brown, 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 \_\_\_\_\_, 2019.

\_\_\_\_\_  
By Tyler Brown, Section Manager  
the duly authorized representative of the Secretary of the  
Department of Natural Resources and Environmental Control

\_\_\_\_\_  
Matthew Jones, 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

WETLANDS & SUBAQUEOUS  
LANDS SECTION

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

**MARINA PERMIT  
CONTRACTOR'S COMPLETION REPORT  
POST-CONSTRUCTION**

**Marina Permit Number:** MP-455/16

**Name:** TAC Beacon 1, LLC  
c/o: Robert Sipple

**Address:** At the terminus of Peaceful Lane  
Ocean View, DE 19975

**Parcel #:** 1-34-12.00-170.00

*I hereby certify that I have constructed the project authorized by the above-referenced Marina Permit in accordance with the approved plans for the project.*

\_\_\_\_\_  
**Printed Name of Contractor**

\_\_\_\_\_  
**Name of Company**

\_\_\_\_\_  
**Contractor's Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Telephone Number**

Upon completion of construction, this form shall be completed, signed by the contractor, and mailed to the Wetlands and Subaqueous Lands Section at:

**DNREC  
Wetlands and Subaqueous Lands Section  
89 Kings Highway  
Dover, Delaware 19901**

Or faxed to the Wetlands and Subaqueous Lands Section at: **302-739-6304**

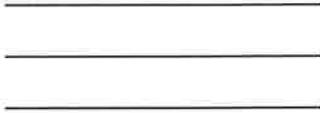
***This form must be received by the Department within ten days of the date that construction is completed.***

=====  
*For official use only*

*Compliance inspection date* \_\_\_\_\_ *Built in accordance with plans*  *Yes*  *No*

*Scientist:* \_\_\_\_\_

*Delaware's good nature depends on you!*



Affix  
Proper  
Postage  
Here

**Mail to:**  
DNREC – Wetlands and Subaqueous Lands Section  
89 Kings Highway  
Dover, DE 19901

--

--

--

--



## WETLANDS AND SUBAQUEOUS LANDS SECTION

**PERMIT NO.:** MP-455/16

**CONSTRUCTION EXPIRATION DATE:** \_\_\_\_\_

### **TO CONDUCT THE FOLLOWING ACTIVITIES:**

**TO OPERATE A TWELVE (12) SLIP MARINA WITH THE FOLLOWING FACILITY STRUCTURES:**

- A 6 foot wide by 130 foot long floating dock (east)
- A 6 foot wide by 235 foot long floating dock (west)
- A 6 foot wide by 28 foot long courtesy dock (east)
- A 6 foot wide by 26 foot long courtesy dock (west)
- Two (2) 7 foot wide by 14 foot long floating PWC docks
- A 16 foot wide by 28 foot long concrete boat ramp

### **LOCATED ON PUBLIC SUBAQUEOUS LANDS:**

In White Creek,  
The Solitudes of White Creek Community Marina,  
At the terminus of Peaceful Lane,  
Ocean View, Sussex County, Delaware

**ISSUED TO:** Tac Beacon 1, Llc

**LOCATION OF WORK:** Same as above

**DISPLAY THIS CERTIFICATE IN A HIGHLY  
VISIBLE LOCATION ON THE JOB SITE.**

**Authorized by:** \_\_\_\_\_





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

TAC Beacon 1, LLC  
c/o: Robert Sipple  
2500 Wrangle Hill Road, Suite 101  
Bear, DE 19701  
Tax Parcel: 1-34-12.00-170.00

Subaqueous Lands Lease: SL-455/16  
Associated Marina Permit: MP-455/16  
Associated O&M Plane: OM-455/16  
Date of Issuance:  
Construction Expiration Date:

**SUBAQUEOUS LANDS LEASE  
TO CREATE A NEW TWELVE (12) SLIP MARINA**

**GRANTED TO:**

**TAC Beacon 1, LLC**

**TO REMOVE:**

**An existing 4 foot wide by 15 foot long pier  
An existing 6 foot wide by 12 foot long dock  
An existing concrete boat ramp and restore the area to functional wetlands**

**TO CONSTRUCT AND UTILIZE THE FOLLOWING STRUCTURES:**

**A 6 foot wide by 130 foot long floating dock (east)  
A 6 foot wide by 235 foot long floating dock (west)  
A 6 foot wide by 28 foot long courtesy dock with associated wing wall (east)  
A 6 foot wide by 26 foot long courtesy dock with associated wing wall (west)  
Two (2) 7 foot wide by 14 foot long floating PWC docks  
A 16 foot wide by 28 foot long concrete boat ramp**

**PORTIONS OCCUPYING PUBLIC SUBAQUEOUS LANDS TOTALING:**

**3,018 square feet**

**LOCATED CHANNELWARD OF MEAN LOW WATER:**

**In White Creek,  
The Solitudes of White Creek Community Marina,  
At the terminus of Peaceful Lane,  
Ocean View, 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. 2019, to construct the above-referenced project in accordance with the approved plans for

*Delaware's good nature depends on you!*

this Lease (6 sheets) as approved on \_\_\_\_\_ as authorized by Secretary's Order No. \_\_\_\_\_ and the application dated November 14, 2016 and received by the Department on November 16, 2016, with subsequent information received on February 16, 2017, April 26, 2017, June 8, 2017, August 17, 2017 and October 12, 2017.

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

WHEREAS, TAC Beacon 1, LLC, owner(s) of certain lands adjoining to the White Creek have applied for permission to occupy 3,018 square feet of those public lands to install the indicated structures for private use of the residents of The Solitudes on White Creek 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 replaces all previously-issued subaqueous lands leases issued to TAC BEACON 1, LLC at this address (SL-024/15) which are hereby voided. Existing structures shall be removed prior to the construction of authorized structures granted by this lease, if not incorporated within the approved plans. The existing concrete boat ramp shall be removed, regraded, and restored to *Spartina Alterniflora* wetlands.
2. 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.
3. 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. This Lease is granted for the purpose of creating a new twelve (12) slip marina as indicated on the approved plans. Any other use without prior approval shall constitute reason for this Lease being revoked.

5. Due to navigational concerns addressed during the public process, no further marina expansion shall be authorized at The Solitudes on White Creek by the Department of Natural Resources and Environmental Control.
6. In order to reduce light pollution, the marina shall incorporate lighting that can be used such as installing lights that illuminate toward the ground instead of upwards, or by installing opaque shields on light fixtures.
7. The authorized area of structure over public subaqueous lands is 3,018 square feet, represented by the 6 foot wide by 24 foot long pier, 6 foot wide by 20 foot long pier, a 6 foot wide by 130 foot long floating dock, a 6 foot wide by 235 foot long floating dock, two (2) 7 foot wide by 14 foot long floating PWC docks and a 16 foot wide by 23 foot long concrete ramp constructed channelward of the mean low water line.
8. The work authorized herein shall be completed in accordance with the terms and conditions of the associated Marina Permit No. MP-455/16.
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 authorized dimensions of the pier, docks, and boat ramp 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. 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.
14. 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.
15. 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, Robert Sipple, the duly authorized representative of TAC Beacon 1, LLC, have caused this instrument to be executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

By: \_\_\_\_\_  
Robert Sipple  
TAC Beacon 1, LLC (Lessee)

By  
Sworn and Subscribed before me on  
this \_\_\_\_ day of \_\_\_\_\_, 2019

(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 \_\_\_\_\_, 2019.

\_\_\_\_\_  
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

WETLANDS & SUBAQUEOUS  
LANDS SECTION

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

**SUBAQUEOUS LANDS LEASE  
CONTRACTOR'S COMPLETION REPORT  
POST-CONSTRUCTION**

**Subaqueous Lands Lease Number:** SL-455/16

**Name:** TAC Beacon 1, LLC  
c/o: Robert Sipple

**Address:** At the terminus of Peaceful Lane  
Ocean View, DE 19975

**Parcel #:** 1-34-12.00-170.00

*I hereby certify that I have constructed the project authorized by the above-referenced Subaqueous Lands Lease in accordance with the approved plans for the project.*

\_\_\_\_\_  
**Printed Name of Contractor**

\_\_\_\_\_  
**Name of Company**

\_\_\_\_\_  
**Contractor's Signature**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Telephone Number**

Upon completion of construction, this form shall be completed, signed by the contractor, and mailed to the Wetlands and Subaqueous Lands Section at:

**DNREC  
Wetlands and Subaqueous Lands Section  
89 Kings Highway  
Dover, Delaware 19901**

Or faxed to the Wetlands and Subaqueous Lands Section at: **302-739-6304**

***This form must be received by the Department within ten days of the date that construction is completed.***

=====  
*For official use only*

*Compliance inspection date* \_\_\_\_\_ *Built in accordance with plans*  *Yes*  *No*

*Scientist:* \_\_\_\_\_

*Delaware's good nature depends on you!*



Affix  
Proper  
Postage  
Here

**Mail to:**  
DNREC – Wetlands and Subaqueous Lands Section  
89 Kings Highway  
Dover, DE 19901

--

--

--

--



**WETLANDS AND SUBAQUEOUS LANDS SECTION**

**LEASE NO.: SL-455/16**

**CONSTRUCTION EXPIRATION DATE:** \_\_\_\_\_

**TO CONDUCT THE FOLLOWING ACTIVITIES:  
TO CONSTRUCT AND UTILIZE THE FOLLOWING  
STRUCTURES:**

- A 6 foot wide by 130 foot long floating dock (east)
- A 6 foot wide by 235 foot long floating dock (west)
- A 6 foot wide by 28 foot long courtesy dock with wing wall (east)
- A 6 foot wide by 26 foot long courtesy dock with wing wall (west)
- Two (2) 7 foot wide by 14 foot long floating PWC docks
  - A 16 foot wide by 28 foot long concrete boat ramp

**TO REMOVE EXISTING STRUCTURES:**

- An existing 4 foot wide by 15 foot long pier
- An existing 6 foot wide by 12 foot long dock
- An existing concrete boat ramp and restore to wetlands

**LOCATED ON PUBLIC SUBAQUEOUS LANDS:**

In White Creek,  
The Solitudes on White Creek Community Marina,  
At the terminus of Peaceful Lane,  
Ocean View, Sussex County, Delaware

**ISSUED TO: Tac Beacon 1, Lic  
DISPLAY THIS CERTIFICATE IN A HIGHLY  
VISIBLE LOCATION ON THE JOB SITE.**

**Authorized by:** \_\_\_\_\_

