WSLS DOCKING FACILITIES GUIDANCE DOCUMENT

(As amended July, 2005)

I. Purpose

This guidance document is intended with the following in mind:

- To guide staff from the Department's Wetlands and Subaqueous Lands Section (WSLS) in their permitting decisions for water access structures, with the goal of making those decisions more consistent and predictable for consultants, contractors and the regulated· community.

- To serve as guidance for applicants, and to provide applicants with a starting point for dock, pier and walkway design. It is not intended to expressly prohibit larger structures, or indicate definite approval of structures which meet the guidance criteria, but rather, to indicate which applications can be processed more quickly with a higher likelihood of approval, and which will require additional justification or have more difficulty in gaining approval.

- To address the Department's concerns regarding the cumulative adverse environmental and public use impacts to public trust lands and State-regulated wetlands from the thousands of square feet of docks, piers, wetland walkways and other structures in, on and over Delaware subaqueous lands, waters and wetlands, particularly in this period of rapid growth and development in Delaware.

II. Applicability

This guidance document should be applied in all Delaware waters and wetlands, but with particular emphasis on the following:

- structures in, on or over public subaqueous lands,
- structures in, on or over State-regulated wetlands,
- structures in, on or over ERES waters (waters of exceptional recreational or ecological significance), as identified in the Delaware Water Quality Standards,
- structures in the upper reaches of tributaries,
- structures in areas with poor flushing,
- structures in areas of high boat traffic, and
- structures in areas where navigation safety is of particular concern.

III. Authorities

This guidance document has been developed in accordance with the Regulations Governing the Use of Subaqueous Lands, the Wetlands Regulations, and their enabling statutes (7 Del. Code Chapters 72 and 66, respectively).

In general, the WSLS is concerned about overly large structures due to the increased likelihood of creating navigational problems (if not now, then in the future), contributing pollutants to sediments and surface waters, and the shading and fragmentation of wetland and shallow water habitat. The cumulative effects of these structures become more significant as they become more numerous.

Of equal concern is the issue of placing private docks and piers in public subaqueous lands. As the agency entrusted with the protection and preservation of public trust lands for the use of all Delawareans, the Department is concerned about the ever growing square footage of such lands that are being leased for private use each year.

The Public Trust Doctrine provides that title to tidal and navigable waters, the lands beneath, as well as the living resources inhabiting these waters within a State, is a special title held in trust by the State for the benefit of the public. Delaware has recognized the Public Trust Doctrine through adoption by the General Assembly, and administration by the DNREC, oP'The Subaqueous Lands Act" (7 DeLe., Chapter 72), which acknowledges the presence and importance of *public* subaqueous lands.

IV. Definitions

- *Community Structure* - Piers and docks that are intended to serve the water access needs of more than two waterfront lots or residences;
- *Dock* - Structures in subaqueous lands that are parallel to the shoreline and whose primary purpose is the berthing of vessels;
- *Pier* - Structures in subaqueous lands that are perpendicular to the shoreline and whose primary purpose is to gain access to a dock and/or a vessel from the shoreline;
- *Walkway* - Structures that cross State-regulated wetlands whose primary purpose is to gain access to a pier, dock, or hunting blind;

V. Application Processing

Applications for structures which do not exceed the dimensions identified below will expedite application review by WSLS staff with the goal of reducing the time required to process permits for such projects. Applications for structures which do not or cannot conform with the dimensions identified below, must include a written justification to explain why a larger size is needed and will require a more detailed review by WSLS staff. When modifications are required to bring structures into compliance with this guidance document, a revised application and plans must be prepared by the applicant or the applicant's agent and submitted to the WSLS for processing.

VI. Critical Dimensions and Requirements for Structures

General:

Structures should always be the minimum size necessary to accomplish the applicant's objectives. The number of piles per linear foot of dock and/or pier should be the minimal number necessary while still ensuring structural stability.

Plastic lumber and other such building materials that do not leach pollutants into the aquatic ecosystem are preferred over CCA-treated lumber. Creosote-treated lumber is prohibited.

Docks: Maximum Width including piles = 5 feet

. Maximum Length = length of the vessel; For multiple vessels, dock length should not exceed the sum of the vessel lengths plus 5 feet for each gap between vessels. For vessels less than or equal to 20 feet in length, a dock up to 20 feet in length may be approved;

Docks with Boatlifts (Use of boatlifts is encouraged wherever feasible, particularly for pontoon boats and other aluminum-hulled vessels that may be treated with anti-fouling paints containing tributyl tin [TBT])

Maximum Width including piles = 6 feet

Maximum Length = length of the vessel; for multiple vessels, dock length should not exceed the sum of the vessel lengths plus 5 feet for each gap between vessels.

Modular Floating Docking Systems- These systems require a permit/lease. They should be sized so as to be the minimum size necessary to accommodate the vessel to be berthed there. Such docking systems may be required to be removed during the off season, particularly when approved on public subaqueous lands.

Docks In Artificial Lagoons Attached Directly to Bulkheads

At sites where there is no emergent wetland or aquatic vegetation along the shoreline, the Maximum Width including piles = the width necessary to reach water of an appropriate depth to berth the applicant's vessel (see also "Pier Maximum Length", below), but not to exceed 8 feet.

Maximum Length = length of the vessel; for multiple vessels, dock length should not exceed the sum of the vessel lengths plus 5 feet for each gap between vessels.

Piers: Maximum Width including piles = 4 feet
Maximum Length = minimum channelward encroachment that will provide 18 inches of water at mean low water, unless specific information can be provided to show that the draft of the vessel to be 'berthed at that location exceeds 18 inches, and a copy of the boat registration is provided.

Stand-Alone Piles
Maximum = 2 per vessel for vessels 30 feet or under

Walkways Over State-Regulated Wetlands

Wetland walkways have a significant adverse impact on the marshes which they traverse. Alternative water access possibilities must be explored by the applicant and found to be infeasible prior to moving forward with an application for a· wetland walkway. Major factors considered by the Department in reviewing wetland walkways include the following:

- Total walkway length,
- Walkway orientation,
- Walkway height above the marsh surface,
- Walkway construction materials and design,
- Wetland type and condition,
- Presence and location of other wetland walkways in close proximity, and
- Proposed use and needJor the structure, and the viability of alternatives.

Minimum Design Criteria (for private structures):

A. The total length of the walkway over State-regulated wetlands should not exceed 150 feet.

B. For walkways crossing emergent wetlands including seasonally veget~ted wetlands, and forested wetlands:
Maximum Width including piles = 3 feet
Minimum Height over marsh surface = 2.5 feet

C. For walkways crossing scrub-shrub wetlands:
Maximum Width including piles = 4 feet
Minimum Height over marsh surface = 3.5 feet

D. Wetlands walkways should be located, oriented (i.e. relative compass direction) and designed (i.e. length, width, height and materials) to minimize shading impacts on wetland vegetation under and adjacent to the walkway. North-south orientations are typically preferred.

E. Piling should be located under the decking wherever possible. If that is not possible, piling should not stick up above the decking more than 18 inches.

F. Railings should be avoided but will be considered if walkway heights greater than 3 feet above the marsh surface are proposed. Any ancillary structures such as railings, waterlines, electric lights, etC. must be indicated on the permit application plans.

·G. Un-vegetated tidal mudflat areas that do not support seasonal wetland vegetation but are mapped as wetlands will be considered as open water for the purposes of dimension guidelines. Strueturesin these areas should conform to the dimensions for piers described above.

H. Construction Requirements

1. Construction should be completed by working out from completed sections. No construction equipment should traverse the wetland.
2. Construction should occur during the winter dormant season (November 1 - March 31) whenever possible.
3. Decking products such as honeycombed fiberglflss grating or other innovative products which allow maximum light penetration are preferred. If traditional planked decking is used, it should include a minimum of 0.5 inch spacing between the decking boards.
4. Helical screw piling or driven piles are preferred. "Jetting in" of piling should be avoided.
5. Pilings should be installed without the use of heavyeqtiipment wherever feasible.
6. The use of railings should be avoided except as described in F, above.

I. Compensation may be required for unavoidable adverse impacts resulting from the presence or construction of structures in State-regulated wetlands.

VII. <u>Exceptions</u>

- Community Structures - Maximum Pier and Dock Widths = 6 to 8 feet, Maximum Wetland Walkway Widths = 4 feet, Walkway Lengths> 150 feet will be considered.
- Public Structures serving the handicapped should be designed according to

Americans with Disabilities Act standards. Wheel chair stops, handrails, ramps or other appropriate access and safety measures must be included in the design; For private structures serving handicapped applicants, pier widths up to 5 feet will be considered if other applicable ADA standards are included in the design.

- Floating Structures - if product literature is provided to support the added width needed for design stability.

Note: Child safety cannot be accepted as appropriate justification for added pier and dock *widths.* As a general safety precaution for both children and adults, applicants should consider adding water access ladders and easily accessible life rings to their dock and pier designs, especially on long access piers.

VIII. Lease Recordation

A special condition is contained in all Subaqueous Lands Leases to require that they be recorded with the Recorder of Deeds for the appropriate county. Such leases shall not be considered valid, and construction cannot begin, until evidence of lease recordation has
been supplied to the WSLS. .

This requirement has been added primarily to protect property buyers in the case of upland property transfer. Without such a requirement to ensure that lease information is uncovered during routine title searches, prospective buyers may purchase property unaware of the responsibilities associated with the corresponding Subaqueous Lands Lease. Guidance on lease recordation procedures for each County is included in the application package for structures in public subaqueous lands.

IX. Guidance for Applicants and Agents in the Preparation of Permit Applications

Following are some of the basic regulatory criteria from Sections 3.01, 3.02 and 3.03 of the Regulations Governing the Use of Subaqueous Lands, that are utilized by WSLS staff during application review. Adherence to these criteria will expedite review.

A. All structures should be the minimum size necessary to achieve their intended purpose. Even when the repair/replacement of existing structures is proposed, every effort should be made to reduce the size of structures that have not been previously minimized, particularly in public subaqueous lands.

B. Structures, *including the preemptive berthing areafor vessels,* should not encroach channelward from the mean low water line more than 10% of the width of the waterbody as measured at mean low water. Up to 20% encroaclunent may be
. allowed to obtain appropriate water depths and avoid dredging, if specific information regarding the drafts of vessels to be berthed at the facility and detailed mean low water site bathymetry is included in the application. However, 20% encroachment will not be approved ifthe structures have not been minimized as described above.

C. All structures, *including the preemptive berthing area for vessels,* must be at least 10 feet from any navigation channel.

D. Use of creosote-treated lumber is prohibited.

E. Gazebos are prohibited.

F. Boathouses and other roofed boat docking structures are not considered to be minimized as required in item A, above.

G. Structures, including the preemptive berthing area for vessels, must be located at least 10 feet from adjacent property lines unless a letter of no objection from the adjacent property owner is included in the application.

H. The removal of derelict structures and all creosote treated lumber from subaqueous lands at any site where new structures are proposed is always encouraged. No permit isrequired for the removal of structures.

I. The minimum water frontage for any parcel where a dock or pier is proposed must be at least 40 feet.

1. Property Boundaries

The applicant's water-side property boundary should be identified on all plans so that WSLS staff can determine if, and how much, of a structure will be off the applicant's property. . All un-deeded underwater land is assumed to be State public subaqueous lands. If the subaqueous lands upon which the structure is to be built are not public subaqueous lands and are not owned by the applicant (i.e. typical case in artificial lagoons and many ponds), the application must contain the permission of the underwater land owner.

Also note that in ponds owned and managed by the Division ofFish and Wildlife, the Department's "Pond Policy" dated May 14, 1992 and amended March 31, 1998 applies. Oneofthe Pond Policy objectives is to avoid permitting "the installation of any private pier, dock, ramp or bulkhead in ponds except where there is irrefutable evidence of an existing pier, dock, ramp or bulkhead."

Note: Even when the applicant's deed and/or property survey contain a metes and bounds description of all boundaries, if the deed also describes the water-side property boundary as the edge of the waterbody itself, that parcel is deemed to be bounded by the mean low water line in tidal waters, and by the ordinary high water line in non-tidal waters. Most waterfront property owners are not aware that such property boundaries are soft. That is, they can fluctuate, moving landward if erosion is occurring, or waterward if the area is accreting.

K. Speculative Construction

All applications for boat docking facilities must include information about the size, draft and ownership ofvesse1s proposed to be berthed there. The Department will not authorize the construction of docking structures on public subaqueous lands for which there is no immediate intended boating use. Applications for boat docking facilities should, therefore, include a boat registration or other proof that the applicant currently owns the vessel or vessel(s) proposed to be berthed at the facility.

L. Docks on Subdivided Lots

Applications will not be accepted for multiple boat docking facilities on an existing parcel proposed for future subdivision by an applicant. Section *1.06.GA* of the Regulations Governing the Use of Subaqueous Lands states that: "No individual boat dock application shall be accepted prior to the legal subdivision and sale of individual lots on, or adjacent to, the proposed structure."

Checklist for Application Plans and Drawings

All applications for docks, piers and wetland walkways must include the following:

___ A vicinity map with the project location clearly marked on it, this map must have enough detail so that someone not familiar with the area can find the site.

___ At least one plan view and one section view of the proposed structures.

___ All plans must be sealed and include a north arrow.

___ All plans must be titled and dated.

___ All plans must include the applicant's tax parcel number.

Plan views, at a minimum, must show the following:

___ All boundaries of the applicant's property, including the waterside boundary;

___ The location of the mean high and mean low water lines in tidal waters. or the ordinary high water line in the case of non-tidal waters;

___ The location of any tidal wetlands on the property;

___ The proposed structure drawn to scale and its position on/adjacent to the applicant's property boundaries depicted accurately;

___ Structure dimensions must be indicated on the plans in feet and inches.

___ Existing docking structures on adjacent properties; in narrow artificial lagoons or narrow natural waterbodies, existing structures on the opposite shoreline must be shown.

___ Mean low water depths. In the vicinity of, and immediately channelward of the proposed structure;

___ The docking position of the vessels to be berthed at the dock or pier including vessel lengths. widths and drafts;

___ The direction of-ebb and flow of tide relative to the applicant's property; .

___ The edge of any navigation channels and/or the estimated distance between the preemptive berthing area and the channel edge; .

___ The name of the waterbody adjacent to the applicant's property; if the structure is in an unnamed artificial lagoon, the plans should read "Unnamed artificial lagoon adjacent to WATERBODY NAME".

Section views, at a minimum, must show the following:

___ The location of the mean high and mean low water lines in tidal waters, or the ordinary water line in the case of non-tidal waters;

___ The location of the applicant's waterside property boundary;

___ The location of any tidal wetlands that the structure may be crossing;

___ The distance between pilings;

___ The height of piling stickup above the decking, if any; .

___ Bottom bathymetry under the structure at mean: low water; .

___ Height of wetland walkways above the marsh surface.

Other General Requirements:

___ Any existing structures on/adjacent to the applicant's property must be clearly differentiated from proposed structures. .

___Proposals for handrails, electric lights or wiring, water pipes, hoses, pumps or other ancillary facilities must be indicated on the plans.