



Deposition of:  
**DNREC Public Hearing**

*January 21, 2021*

In the Matter of:  
**Delaware State Court Reporting Cases**

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STATE OF DELAWARE  
DELAWARE DEPARTMENT OF NATURAL  
RESOURCES AND ENVIRONMENTAL CONTROL

In re: Fort DuPont )  
Subaqueous Lands Permit )  
Docket #2020-P-W-0028 )

A public hearing was taken pursuant to notice via remote videoconferencing of all participants beginning at 6:00 p.m., on Thursday, January 21, 2021, before Carrie Gold, Court Reporter.

BEFORE: Theresa Newman, Hearing Officer  
FOR THE DIVISION: Rebecca Bobola, DNREC  
FOR THE APPLICANT: Brian Devine, Duffield Associates  
Steve Gorski, Duffield Associates  
ALSO PRESENT: Sascha Mohammed, Jeffrey Randol

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I N D E X

Page

Introduction by Hearing Officer Newman.....	3
Presentation by Rebecca Bobola.....	8
Entry of Department's Exhibits 1 through 6....	10
Presentation by Brian Devine.....	12
Presentation by Steve Gorski.....	16
Entry of Applicant's Exhibit 1.....	18
Public Speakers:	
Susan Rahn.....	20
Erica Lindsey.....	21
Tim Konkus.....	23
Conclusory Remarks by Hearing Officer Newman....	26
Certificate of Reporter.....	28

1 HEARING OFFICER NEWMAN: Good evening. We  
2 will begin the hearing for tonight. I believe everyone  
3 is successfully joined in and ready to go.

4 Thank you for your time, taking time out  
5 of your busy schedules to connect with us today. The  
6 date is Thursday, January 21, 2021, and the time is now  
7 6:02 p.m. We are here this evening to provide a virtual  
8 platform for the State of Delaware's Department of  
9 Natural Resources and Environmental Control to conduct  
10 its virtual public hearing on the permit application  
11 submitted by Fort DuPont Redevelopment and Preservation  
12 for a subaqueous land permit.

13 My name is Theresa Newman, and Secretary  
14 Garvin has appointed me to serve as the hearing officer  
15 for tonight's formal proceeding.

16 There have been changes made to DNREC's  
17 standard hearing protocols necessitated by Delaware's  
18 ongoing state of emergency due to the COVID-19 pandemic.  
19 First and foremost, the hearing is being conducted  
20 virtually. No one has -- no one is together in the same  
21 room. Everyone is participating independently at their  
22 own respective locations.

23 While we are not physically gathered  
24 together tonight, WebEx does generate a list of those

1 that are virtually present for this proceeding so the  
2 Department will have a record of those who have  
3 electronically joined for this event. And, again, I want  
4 to thank everyone for their interest in this matter.

5 At the conclusion of the introductory  
6 remarks, I will be turning the hearing over to the  
7 Department's staff and the applicant to provide the  
8 presentations for the record being generated in this  
9 matter.

10 Once the presentations conclude, those  
11 persons who pre-registered in advance of this hearing  
12 will be acknowledged and provided the opportunity to  
13 offer comment on the proposed application in alignment  
14 with DNREC's standard comment protocols.

15 There is a court reporter virtually  
16 present who will prepare a verbatim transcript of this  
17 hearing pursuant to the statutory requirement for DNREC  
18 to have the same prepared. And as always, that  
19 transcript will be posted on the hearing web page  
20 dedicated to this matter as soon as it is received.

21 In addition, I would encourage those who  
22 are attending tonight's hearing to also visit the hearing  
23 web page dedicated to this matter for additional details  
24 concerning the proposed application submitted by Fort

1 DuPont Redevelopment and Preservation. The hearing web  
2 page can be found online under the Administrative Law  
3 Section of DNREC's website that will be listed at the  
4 conclusion of tonight's hearing.

5 Before we begin the presentations tonight,  
6 please be advised of the following protocols that remain  
7 in place for all DNREC public hearings:

8 One, all comments received must be limited  
9 solely to the subject matter of tonight's hearing. All  
10 comments pertinent to the subject matter of this virtual  
11 hearing will be incorporated into the record being  
12 generated in this matter.

13 Two, in order to ensure that everyone who  
14 wishes to offer comments for the Secretary's  
15 consideration is accommodated, the record in this matter  
16 shall remain open following tonight's proceeding through  
17 February 5, 2021.

18 Three, there is only one authentic record  
19 of the formal proceeding tonight and it is the official  
20 court reporter's verbatim transcript.

21 Four, the statutory purpose of tonight's  
22 hearing is to build the record with regard to the  
23 proposed application before us tonight. A record  
24 consisting of tonight's hearing transcript, all written

1 comments, all exhibits, and eventually the Hearing  
2 Officer's Report will be reviewed by Secretary Garvin.  
3 The Secretary will ultimately issue an order following  
4 that review process containing his decision on this  
5 matter and the reasons therefore.

6 Per DNREC's standard hearing protocols,  
7 there will be no Q&A or chat session permitted during the  
8 hearing.

9 Six, those who have pre-registered to  
10 offer verbal comment will be acknowledged to speak at the  
11 conclusion of the presentation portion of tonight's  
12 proceeding. Additional instruction with regard to  
13 offering the verbal comment for tonight will be provided  
14 at that time.

15 Number seven, lastly, it is important to  
16 note that no decision has already been made by the  
17 Department, nor will a decision be made tonight with  
18 regard to the proposed application.

19 As previously stated, DNREC wishes to  
20 ensure that everyone is able to offer their comment for  
21 inclusion into the record being generated in this matter.  
22 Therefore, the record will remain open through Friday,  
23 February 5, 2021, so that the public may offer written  
24 comment, should they wish to do so.

1                   Comments may be submitted through a  
2 comment form link on the hearing web page via email to  
3 DNRECHearingComments@delaware.gov, or via the U.S. Postal  
4 Services at the physical address for DNREC indicated on  
5 the hearing web page and/or as the public notices  
6 previously issued in this matter.

7                   Written comments to DNREC may not be  
8 submitted using social media platforms such as Twitter,  
9 Facebook, YouTube, or text messaging.

10                  Please remember all comment, whether  
11 received through USPS or via the electronic mechanisms  
12 noted just now, as long as it is received by the  
13 Department on or before February 5th will bear the exact  
14 same weight and will be considered equally by the  
15 Secretary prior to making his final decision in this  
16 matter.

17                  Lastly, the ultimate decision regarding  
18 this matter is made by DNREC Secretary Garvin. The  
19 formal hearing tonight acts as a mechanism to enable the  
20 Department to thoroughly vet the application matter to  
21 the public and to let the public know the various ways  
22 which comment may be submitted for Secretary Garvin's  
23 consideration if so desired.

24                  I will now hand it over to Mrs. Bobola



1 with the Division of Waters, Wetlands and Subaqueous Land  
2 Section to provide the Department's presentation.

3 Ms. Bobola, are you ready to present?  
4 You're muted. Okay. There you go.

5 MS. BOBOLA: I am.

6 HEARING OFFICER NEWMAN: Could you speak  
7 up? Ms. Bobola?

8 MS. BOBOLA: Yes.

9 HEARING OFFICER NEWMAN: Okay.

10 MS. BOBOLA: It's not advancing my slide.

11 HEARING OFFICER NEWMAN: Okay. Are you  
12 good?

13 MS. BOBOLA: I think so.

14 HEARING OFFICER NEWMAN: Okay, great. You  
15 may proceed.

16 MS. BOBOLA: Thank you. Good evening. My  
17 name is Rebecca Bobola. I'm an environmental scientist  
18 with the Division of Waters, Wetlands and Subaqueous Land  
19 Section, and I will be presenting the application as  
20 submitted for the Fort DuPont Redevelopment and  
21 Preservation Corporation's application.

22 On March 13, 2020, Governor Carney  
23 declared a state of emergency due to the public health  
24 threat of COVID-19. In order to prevent community

1 transmission and unnecessarily public -- unnecessarily  
2 group gatherings, we were able to transition to  
3 electronic meetings.

4 The purpose of the public hearing this  
5 evening is to provide the public an opportunity to  
6 comment on Fort DuPont Redevelopment Preservation  
7 Corporation's application to install an approximate 2,000  
8 linear foot rip-rap revetment for shoreline  
9 stabilization. This permit would be in the form of a  
10 subaqueous lands permit.

11 Here's an aerial image of the project  
12 location shown on the east side of Delaware City's Branch  
13 Canal, the endpoints being represented by the gold stars.  
14 Here, also, is visible a zoomed-in image of the projected  
15 project site on the east bank of the Delaware City Branch  
16 Canal.

17 This is the full scope of the project as  
18 submitted, extending from the boat ramp bulkhead south  
19 towards the Fifth Street Bridge on the east bank.

20 This is a representation of roughly the --  
21 the most northern third of the project and a cross  
22 section of the proposed rip-rap revetment.

23 This is the central third of the proposed  
24 project and a cross section of that area.

1                   And this is roughly the most southern  
2 third of the project and the two cross sections for this  
3 area, one including an existing out pole, and one cross  
4 section not including the out pole.

5                   The project was placed on a 20-day public  
6 notice period published in the Delaware State News and  
7 The News Journal from September 16, 2020, to October 6,  
8 2020. During that public comment period, we received one  
9 written comment in objection.

10                   We conducted the regulatory review, which  
11 is procedural for the application, and this includes  
12 conducting a desktop review to determine if a proposed  
13 structure is consistent with the regulatory requirement.

14                   Some items, as part of this review,  
15 included evaluating the proposed slope, proposed stone  
16 size for the given area, methods of placement, and  
17 materials to be placed behind the rip-rap revetment.

18                   This concludes my presentation of the  
19 application as presented.

20                   Theresa, would you like me to introduce my  
21 exhibits?

22                   HEARING OFFICER NEWMAN: Yes, please.

23                   MS. BOBOLA: My first exhibit is the State  
24 of Emergency Proclamation and news release authorizing

1 electronic public meeting.

2 Exhibit Number 2 are the state law and  
3 regulations regarding subaqueous lands.

4 Exhibit Number 3 is the applicant's  
5 application.

6 My fourth exhibit are the public notices  
7 as sent to stakeholders and as posted to DNREC's website,  
8 the Delaware State News and The News Journal.

9 Exhibit Number 5 is this public hearing  
10 presentation as presented.

11 And Exhibit Number 6 are comments received  
12 prior to the public hearing.

13 HEARING OFFICER NEWMAN: Thank you,  
14 Ms. Bobola.

15 Does this conclude the Department's  
16 presentation?

17 MS. BOBOLA: It does.

18 HEARING OFFICER NEWMAN: Thank you. I  
19 have received the electronic versions of the proposed  
20 exhibits by the Department, and I hereby do mark those  
21 exhibits as Department's Exhibits 1 through 6.

22 Now that the department's presentation has  
23 concluded, we will now move on to the applicant's  
24 presentation, and I will be unmuting Duffield Associates,

1 and we will begin with Brian Devine.

2 As you present on behalf of the  
3 application, please state your first and last name for  
4 the record.

5 MR. DEVINE: Hello. This is Brian Devine  
6 with Duffield Associates. I'd like to -- Duffield  
7 Associates is the agent for the applicant, Fort  
8 Development -- Redevelopment Preservation Corporation.  
9 I'd like to thank you for your time to talk about this  
10 project.

11 And I think some of the things that we  
12 will discuss have already been discussed, so we'll kind  
13 of fly through those a little bit quicker, and then we  
14 just have a few more details to add.

15 Presenting with me this evening will be  
16 myself and Steve Gorski, who will take over in a few  
17 minutes, and he is our senior civil engineer on the  
18 project.

19 We're going to talk a little bit about the  
20 project history of this portion of the site, give a  
21 little bit of overview of the slope that we are proposing  
22 to add the revetment to, give a few projects -- of the  
23 details and discuss some of the benefits.

24 So as we know, the applicant is the Fort

1 DuPont Redevelopment Preservation Corporation. As noted,  
2 it was established by the Delaware legislature to, among  
3 other things, preserve and protect recreational and other  
4 amenities of the Fort DuPont complex and to make capital  
5 improvements along with those in the complex which is  
6 approximately 325 acres.

7 The portion of the site that we're talking  
8 about today, which is the Branch Channel to the  
9 Chesapeake and the Delaware Channel itself, the Branch  
10 Channel itself was conveyed to the redevelopment  
11 authority from the -- from the federal government and the  
12 state of -- and the -- and another portion to the State  
13 of Delaware through America's Water and Infrastructure  
14 Act of 2018, otherwise an award of 2018.

15 You will see in there the revetment  
16 project is located along the Fort DuPont portion of the  
17 Branch Channel. As noted previously, it's generally  
18 between the boat ramp bulkhead, and it stops a few  
19 hundred feet off of the Ninth Street Bridge. It's  
20 roughly depicted by the shaded area here. It's roughly  
21 bordered by the Branch Channel to the north and to what's  
22 known as the Canal District of the Fort DuPont complex to  
23 the south.

24 And this is another depiction of that area

1 where you can see the Delaware City side of the channel  
2 on the left, the Delaware City Marina kind of in the  
3 foreground, and then the Branch Channel and the Fort  
4 DuPont development on the right. And in the foreground,  
5 you can see the slope that's proposed to be revetted.  
6 And behind that, you can see portions of what, as we  
7 mentioned, is the Canal District, which is partly under  
8 construction.

9           So the revetment action is primarily to  
10 rebuild what was formerly a rip-rap slope along the  
11 Branch Channel. The existing slope, which has rip-rap  
12 and trees growing through it, has experienced erosion.  
13 It's no longer a consistent slope, with pockets of more  
14 severe erosion and some damage from tree deterioration  
15 and slope -- slope sloughing.

16           Historically, the slope had been treated  
17 with armoring, mainly rip-rap. However, the maintenance  
18 that has been done along the shoreline has been  
19 infrequent and has not been done in a number of years.  
20 That maintenance work that we're proposing is -- or  
21 maintenance work has been performed recently is primarily  
22 above the tidal area, but has not maintained the slope  
23 and not kept it free of growing shrubs and trees that are  
24 typically required to be removed periodically to prevent

1 the deterioration of the stability of the slope and  
2 maintain the geometry.

3 Here's a closer-up picture of just the  
4 Canal District side. And in the area on the right, you  
5 see some recent work that the Canal District project had  
6 installed. That is outside of the project area, and the  
7 revetment begins in the middle section of this picture  
8 and extends to the left.

9 As you can see in this photo, again, the  
10 Canal District on the landward side of the project, the  
11 existing fire access and promenade way that was  
12 constructed on the Branch Channel side of the Canal  
13 District, and then the revetment itself.

14 As an example of some of the remnants of  
15 the former armory which has deteriorated, we've  
16 highlighted some of the areas where the existing rip-rap  
17 has shown through, as well as some of the areas where the  
18 trees and shrubs that have grown through the rip-rap that  
19 was formerly present are proposed to be removed.

20 Some closer-in pictures are shown here  
21 where some of the existing rap that is silted over and  
22 has silted over to the point where trees and shrubs are  
23 growing through it, and these are also showing some  
24 examples how the deterioration has occurred either



1 through storm flows or through erosion, which has  
2 resulted in an unstable slope that results in debris and  
3 sloughing into the channel without maintenance.

4 And with that, I'm going to turn the  
5 presentation over to Steve Gorski, who's going to talk a  
6 little bit about the details of our project. Thank you.

7 MR. GORSKI: Okay. Hello. Steve Gorski,  
8 Duffield Associates.

9 What you see here, Rebecca had already  
10 shown. This is a typical cross section of the rip-rap  
11 revetment. At present, two little slopes provide --  
12 basically mirrors the existing slope. In most cases,  
13 there's some pockets that might be a little steeper, some  
14 may be a little shallower, but primarily, the average  
15 slope is 2 to 1.

16 On the left side at the top is the  
17 promenade that Brian had referenced, that's going to be a  
18 paved concrete 12-foot-wide promenade. It has also  
19 utilities under it, storm drains, some electric and  
20 communication lines as well, and will also serve as an  
21 emergency access during flooding, during -- where you're  
22 still on the vents that may flood the interior of the  
23 Fort DuPont property, so...

24 All right. This picture on the left is

1 from 2010. It's actually a mirror image of what we're  
2 doing on our side. It's along the Delaware City Marina  
3 property. Rip-rap was placed there, like I said, 2010.  
4 At the end of construction, it looked as it does in that  
5 photograph on the left side. On the right side is what  
6 it looks like after -- looked like after three years with  
7 some in-fill, some silt and vegetation.

8 The project benefits, so we had mentioned  
9 before, the main benefits are maintaining the Branch  
10 Channel geometry. Currently, the channel is  
11 deteriorating from wake and wave action, some unstable  
12 slope, some material sloughing in the channel itself  
13 causing erosion pockets throughout parts of the slope.  
14 On top of that, it also will protect the infrastructure,  
15 like I said, along the top of the slope.

16 The promenade, which will be an extension  
17 of the Jack Markell Trail as it lines its way from  
18 termination into the site, and the infrastructure, like I  
19 said, also includes a promenade, which would be a public  
20 access walkway along the Canal District side of the  
21 project. It will then -- it will protect the future  
22 homes that are being built, where a lot of construction  
23 is going on, as well as the outside infrastructure and  
24 the ground construction, the electric lines of the future

1 homes and the storm drain systems.

2 So if that -- that concludes our  
3 presentation.

4 HEARING OFFICER NEWMAN: Thank you. I  
5 have received your presentation electronically. Would  
6 you like to enter your presentation as an Applicant  
7 Exhibit 1?

8 MR. GORSKI: Yes. Thank you.

9 HEARING OFFICER NEWMAN: Okay. We'll do  
10 so. I hereby mark the presentation that was received  
11 electronically that is before you now as Applicant's  
12 Exhibit Number 1 for the record.

13 And just to confirm, that does conclude  
14 the applicant presentation?

15 MR. GORSKI: Yes. Thank you.

16 HEARING OFFICER NEWMAN: Thank you. I'm  
17 going to place you on mute.

18 Now that -- now that the presentations  
19 have concluded, we will turn our attention to those who  
20 have pre-registered for the opportunity to offer verbal  
21 comment at tonight's hearing per the protocols set forth  
22 on DNREC's public hearing web page. Those wishing to  
23 offer verbal comment during the virtual hearing must have  
24 pre-registered with DNREC no later than noon of the day

1 of the hearing.

2 The order of those commenting tonight  
3 will -- was established as a result of the Department's  
4 pre-registration process. All commenters must adhere to  
5 the Department's protocols with regard to offering verbal  
6 comment, including making their comments as concise as  
7 possible, respecting the three-minute time limit, and  
8 limiting their comments to the subject matter of this  
9 hearing.

10 There are four registered commenters that  
11 will be called upon in the following order to offer their  
12 verbal comment. The first to speak will be Susan Rahn;  
13 second, Erica Lindsey; third, Beth Konkus; and fourth,  
14 Tim Konkus. To assist the commenters with regard to the  
15 amount of time that they have, there is a visual timer  
16 that will appear on the screen that will count down three  
17 minutes. When it is the speaker's turn to comment, the  
18 speaker's audio will be unmuted, their identity will be  
19 confirmed, and the timer will begin.

20 At the end of the three minutes, the  
21 speaker's audio will be automatically placed back on  
22 mute, and we will move on to the next person to be  
23 acknowledged to offer comment. Please know there is no  
24 live video feed of the commenter. They will provide a

1 comment by audio only. All comments will be transcribed  
2 by the court reporter and thereby be incorporated into  
3 the record tonight.

4 If the speaker is unable to finish their  
5 comments within the three-minute time period, the  
6 Department encourages them to submit their completed  
7 comment in writing no later than February 5th. No  
8 commenter will be granted more than three minutes of time  
9 to speak for any reason.

10 With that being said, may I have Susan  
11 Rahn unmuted? And please state your first and last name  
12 for the record and you may begin your comment.

13 MS. RAHN: Susan Rahn.

14 HEARING OFFICER NEWMAN: Thank you.

15 MS. RAHN: I live in Fort DuPont on lot  
16 14, pretty much right next to where this proposed rip-rap  
17 is going to be taking place. I was a little surprised  
18 that as a resident living so close to where this is going  
19 to be taking place, that there was no notification  
20 letting us know that this was proposed and would be being  
21 held as a hearing tonight. It does not seem like anyone  
22 else in the community was notified either, so I have  
23 concerns that we're not being transparent as far as  
24 what's going to be happening in our neighborhood. That's

1 all.

2 HEARING OFFICER NEWMAN: Thank you,  
3 Mrs. Rahn, for your comment.

4 We will now move to Erica Lindsey.

5 MS. LINDSEY: Lindsey.

6 HEARING OFFICER NEWMAN: Hi, Ms. Lindsey.

7 MS. LINDSEY: Yes, Erica Lindsey here.

8 HEARING OFFICER NEWMAN: You may proceed.

9 MS. LINDSEY: Okay. The Delaware City  
10 Branch Canal is an integral part of Delaware City's  
11 history and identity. It was hand dug between 1824 and  
12 1829 and was used during the Civil War, The Industrial  
13 Revolution, and World War I. It was used as a waterborne  
14 route for the Underground Railroad. Mules towed barges  
15 of tomatoes and peaches. Steamers carried tourists, and  
16 generations of Delaware City residents fished, swam,  
17 hunted, sailed, and lived by the banks.

18 Today, images of the canal appear on  
19 lamppost banners throughout the town and in print and  
20 electronic media advertisements. That is how important  
21 this canal is to the character of Delaware City. As  
22 their name implies, the Fort DuPont Redevelopment  
23 Preservation Corporation's prime directive should be  
24 preservation. As such, they should seek to protect this

1 historic canal, honor its heritage and history, and not  
2 destroy the remnants of the past with the so-called  
3 improvements described in this application.

4 Historic districts flank both sides of  
5 this, the original C&D Canal, and many physical remnants  
6 of the canal remain. There are two issues relating to  
7 this on the application. First, line 16 asks if there  
8 were any structures and/or fill-in placed prior to 1969.  
9 The FDRPC replied no, but this is false. The original  
10 C&D Canal occupied the area and remnants prior to 1969  
11 remain. The FDRPC is aware of these structures as they  
12 were included in the engineering drawings submitted as  
13 part of this application.

14 Second, there is no evidence of any  
15 Section 106 National Historic Preservation Act  
16 coordination between federal agencies and other relevant  
17 partners. I would expect that the FDRPC would have  
18 coordinated a Section 106 review with the U.S. Army Corps  
19 of Engineers, the National Park Service, the  
20 Superintendent of the First State National Historical  
21 Park, the Delaware City Historic Commission, the State  
22 Historic Property Officer, The National Trust For  
23 Historic Preservation, Main Street Delaware City, and the  
24 Delaware River Basin Commission. The application lacks

1 any proof of coordination with any of these agencies, and  
2 I believe they should all have a chance to weigh in  
3 before any application to alter this canal is considered.

4 Furthermore, I would suggest that the  
5 FDRPC seek to include this, the original C&D Canal, full  
6 of historic significance, in the First State National  
7 Historical Park. Thank you.

8 HEARING OFFICER NEWMAN: Thank you,  
9 Ms. Lindsey.

10 Next, we have Beth Konkus. And although  
11 we don't have Beth Konkus online, I have unmuted Tim  
12 Konkus, assuming they may be together.

13 Is Beth -- if you want to --

14 MR. KONKUS: I'm unmuted?

15 HEARING OFFICER NEWMAN: Yes. Are you  
16 Tim?

17 MR. KONKUS: Beth had to go away, but I  
18 can read her -- in accordance with the instructions, I  
19 can read her statement if you'd like.

20 HEARING OFFICER NEWMAN: Mr. Konkus, you  
21 are limited to your own comment.

22 MR. KONKUS: Okay.

23 HEARING OFFICER NEWMAN: If Beth has a  
24 written comment that she would like to provide, then she



1 may do so up until February 5th.

2 MR. KONKUS: Okay.

3 HEARING OFFICER NEWMAN: Okay. So Beth is  
4 not available to provide a verbal comment; is that  
5 correct?

6 MR. KONKUS: No. She -- she had to  
7 depart.

8 HEARING OFFICER NEWMAN: Okay. That's not  
9 a problem. We will connect with Beth Konkus if you are  
10 unable to. However, we will get the message to her  
11 either way that she can provide any written comment for  
12 the record.

13 So moving on, it will now be your turn,  
14 Mr. Konkus, to provide your verbal comment.

15 MR. KONKUS: Thank you very much. My name  
16 is Tim Konkus. And the application before us tonight, I  
17 feel, is an inaccurate falsehood that's misleading.

18 It was mentioned that the tax parcel where  
19 this project is being done was transferred from the  
20 government to Fort DuPont, yet in the set of deeds that  
21 were provided, there's no mention of this particular  
22 waterway being passed to the applicant, and there is no  
23 instrument that I can find that passes this land to the  
24 Fort DuPont Corporation.

1                   So at this point, and when this was  
2 submitted -- that neither the tax parcel on the form, nor  
3 the Elm Street address on lines 7 and 9 of the  
4 application accurately reflected who owned the land.  
5 Line 7, as far as I'm concerned, needs to list the  
6 federal agency, which until there is an instrument, is  
7 the actual owner of the land.

8                   And when considering this, consider line  
9 12 is the actual work site, and it's in a  
10 federally-regulated wetland from my understanding. Line  
11 18 is also incorrect as the applicant has at least three  
12 additional DNREC permits.

13                   So when considering this application, past  
14 performance is probably the best indicator of future  
15 performance. And with the 2017 application for those  
16 tide gates that we saw, the outfalls, work still  
17 continues as of yesterday, even though the permits that  
18 were gained to do that work have long expired by nearly  
19 60 days.

20                   With respect to those outfalls, the Fort  
21 Corporation failed to follow its own plans and then  
22 didn't complete those outfalls, not once, but twice,  
23 based on the extension in the original permits. Work  
24 continues on the project with no permits. It failed to

1 use the turbidity currents that it said it was going to  
2 use and it failed to place the geo-cloth under the  
3 rip-rap as it said it was going to do. And it failed to  
4 notify the U.S. Coast Guard of the work along the  
5 Delaware City Branch Channel since it is a navigable  
6 waterway.

7 So I think, in terms of past performance,  
8 looking at future performance, that this applicant's past  
9 performance with respect to the subaqueous land permits  
10 demands that this application be denied, returned to the  
11 applicant, the deficiencies corrected, an instrument from  
12 the federal government provided, it be included into the  
13 application, and the entire application start again at  
14 the starting point with the public notes.

15 Thank you for your time.

16 HEARING OFFICER NEWMAN: Thank you,  
17 Mr. Konkus. That will now conclude the public comment  
18 portion of tonight's hearing. Thank you all for your  
19 comment.

20 And, again, for those who may not have  
21 been able to provide their comment at tonight's hearing,  
22 you are able to provide a written comment no later than  
23 Friday, February 5th, to which the hearing record will  
24 remain open through.

1 I want to thank you all for joining the  
2 virtual public hearing. The hearing is now concluded at  
3 6:34 p.m. Thank you.

4 (The hearing concluded at 6:34 p.m.)  
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I do hereby certify that the foregoing hearing was taken before me, pursuant to notice, at the time and place indicated; that the statements of participants were correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription; that the transcript is a true record of the statements made by the participants; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this 27th day of January A.D. 2021.



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Notary Public

<b>0</b>	<b>5</b>	<b>address</b> 7:4 25:3	15:4,6 22:10
<b>0028</b> 1:6	<b>5</b> 5:17 6:23 11:9	<b>adhere</b> 19:4	<b>areas</b> 15:16,17
<b>1</b>	<b>5th</b> 7:13 20:7 24:1 26:23	<b>administrative</b> 5:2	<b>armoring</b> 14:17
<b>1</b> 2:5,6 11:21 16:15 18:7,12	<b>6</b>	<b>advance</b> 4:11	<b>armory</b> 15:15
<b>10</b> 2:5	<b>6</b> 2:5 10:7 11:11 11:21	<b>advancing</b> 8:10	<b>army</b> 22:18
<b>106</b> 22:15,18	<b>60</b> 25:19	<b>advertisements</b> 21:20	<b>asks</b> 22:7
<b>11850</b> 28:16	<b>6:00</b> 1:11	<b>advised</b> 5:6	<b>assist</b> 19:14
<b>12</b> 2:5 16:18 25:9	<b>6:02</b> 3:7	<b>aerial</b> 9:11	<b>associates</b> 1:16,17 11:24 12:6,7 16:8
<b>13</b> 8:22	<b>6:34</b> 27:3,4	<b>agencies</b> 22:16 23:1	<b>assuming</b> 23:12
<b>14</b> 20:16	<b>7</b>	<b>agency</b> 25:6	<b>atlantic</b> 1:22
<b>16</b> 2:6 10:7 22:7	<b>7</b> 25:3,5	<b>agent</b> 12:7	<b>attending</b> 4:22
<b>18</b> 2:6 25:11	<b>8</b>	<b>aided</b> 28:9	<b>attention</b> 18:19
<b>1824</b> 21:11	<b>8</b> 2:4	<b>alignment</b> 4:13	<b>audio</b> 19:18,21 20:1
<b>1829</b> 21:12	<b>815</b> 1:23	<b>alter</b> 23:3	<b>authentic</b> 5:18
<b>19</b> 3:18 8:24	<b>9</b>	<b>amenities</b> 13:4	<b>authority</b> 13:11
<b>1969</b> 22:8,10	<b>9</b> 25:3	<b>america's</b> 13:13	<b>authorizing</b> 10:24
<b>19801</b> 1:23	<b>a</b>	<b>amount</b> 19:15	<b>automatically</b> 19:21
<b>2</b>	<b>a.d.</b> 28:15	<b>appear</b> 19:16 21:18	<b>available</b> 24:4
<b>2</b> 11:2 16:15	<b>able</b> 6:20 9:2 26:21,22	<b>applicant</b> 1:16 4:7 12:7,24 18:6,14 24:22 25:11 26:11	<b>avenue</b> 1:23
<b>2,000</b> 9:7	<b>access</b> 15:11 16:21 17:20	<b>applicant's</b> 2:6 11:4,23 18:11 26:8	<b>average</b> 16:14
<b>20</b> 2:8 10:5	<b>accommodated</b> 5:15	<b>application</b> 3:10 4:13,24 5:23 6:18 7:20 8:19,21 9:7 10:11,19 11:5 12:3 22:3,7,13,24 23:3 24:16 25:4 25:13,15 26:10,13 26:13	<b>award</b> 13:14
<b>2010</b> 17:1,3	<b>accurately</b> 25:4	<b>appointed</b> 3:14	<b>aware</b> 22:11
<b>2017</b> 25:15	<b>acknowledged</b> 4:12 6:10 19:23	<b>approximate</b> 9:7	<b>b</b>
<b>2018</b> 13:14,14	<b>acres</b> 13:6	<b>approximately</b> 13:6	<b>back</b> 19:21
<b>2020</b> 1:6 8:22 10:7 10:8	<b>act</b> 13:14 22:15	<b>area</b> 9:24 10:3,16 13:20,24 14:22	<b>bank</b> 9:15,19
<b>2021</b> 1:11 3:6 5:17 6:23 28:15	<b>action</b> 14:9 17:11 28:12		<b>banks</b> 21:17
<b>21</b> 1:11 2:9 3:6	<b>acts</b> 7:19		<b>banners</b> 21:19
<b>23</b> 2:9	<b>actual</b> 25:7,9		<b>barges</b> 21:14
<b>26</b> 2:10	<b>add</b> 12:14,22		<b>based</b> 25:23
<b>27th</b> 28:14	<b>addition</b> 4:21		<b>basically</b> 16:12
<b>28</b> 2:11	<b>additional</b> 4:23 6:12 25:12		<b>basin</b> 22:24
<b>3</b>			<b>bear</b> 7:13
<b>3</b> 2:3 11:4			<b>beginning</b> 1:11
<b>300</b> 1:23			<b>begins</b> 15:7
<b>302-571-0510</b> 1:24			<b>behalf</b> 12:2
<b>325</b> 13:6			<b>believe</b> 3:2 23:2
			<b>benefits</b> 12:23 17:8,9

<p><b>best</b> 25:14  <b>beth</b> 19:13 23:10                  23:11,13,17,23                  24:3,9  <b>bit</b> 12:13,19,21                  16:6  <b>boat</b> 9:18 13:18  <b>bobola</b> 1:15 2:4                  7:24 8:3,5,7,8,10                  8:13,16,17 10:23                  11:14,17  <b>bordered</b> 13:21  <b>branch</b> 9:12,15                  13:8,9,17,21 14:3                  14:11 15:12 17:9                  21:10 26:5  <b>brian</b> 1:16 2:5                  12:1,5 16:17  <b>bridge</b> 9:19 13:19  <b>build</b> 5:22  <b>built</b> 17:22  <b>bulkhead</b> 9:18                  13:18  <b>busy</b> 3:5</p>	<p><b>certificate</b> 2:11  <b>certify</b> 28:4  <b>chance</b> 23:2  <b>changes</b> 3:16  <b>channel</b> 13:8,9,10                  13:17,21 14:1,3,11                  15:12 16:3 17:10                  17:10,12 26:5  <b>character</b> 21:21  <b>chat</b> 6:7  <b>chesapeake</b> 13:9  <b>city</b> 9:15 14:1,2                  17:2 21:9,16,21                  22:21,23 26:5  <b>city's</b> 9:12 21:10  <b>civil</b> 12:17 21:12  <b>close</b> 20:18  <b>closer</b> 15:3,20  <b>cloth</b> 26:2  <b>coast</b> 26:4  <b>comment</b> 4:13,14                  6:10,13,20,24 7:2                  7:10,22 9:6 10:8,9                  18:21,23 19:6,12                  19:17,23 20:1,7,12                  21:3 23:21,24                  24:4,11,14 26:17                  26:19,21,22  <b>commenter</b> 19:24                  20:8  <b>commenters</b> 19:4                  19:10,14  <b>commenting</b> 19:2  <b>comments</b> 5:8,10                  5:14 6:1 7:1,7                  11:11 19:6,8 20:1                  20:5  <b>commission</b> 22:21                  22:24  <b>communication</b>                  16:20</p>	<p><b>community</b> 8:24                  20:22  <b>complete</b> 25:22  <b>completed</b> 20:6  <b>complex</b> 13:4,5,22  <b>computer</b> 28:9  <b>concerned</b> 25:5  <b>concerning</b> 4:24  <b>concerns</b> 20:23  <b>concise</b> 19:6  <b>conclude</b> 4:10                  11:15 18:13 26:17  <b>concluded</b> 11:23                  18:19 27:2,4  <b>concludes</b> 10:18                  18:2  <b>conclusion</b> 4:5 5:4                  6:11  <b>conclusory</b> 2:10  <b>concrete</b> 16:18  <b>conduct</b> 3:9  <b>conducted</b> 3:19                  10:10  <b>conducting</b> 10:12  <b>confirm</b> 18:13  <b>confirmed</b> 19:19  <b>connect</b> 3:5 24:9  <b>consider</b> 25:8  <b>consideration</b> 5:15                  7:23  <b>considered</b> 7:14                  23:3  <b>considering</b> 25:8                  25:13  <b>consistent</b> 10:13                  14:13  <b>consisting</b> 5:24  <b>constructed</b> 15:12  <b>construction</b> 14:8                  17:4,22,24</p>	<p><b>containing</b> 6:4  <b>continues</b> 25:17                  25:24  <b>control</b> 1:3 3:9  <b>conveyed</b> 13:10  <b>coordinated</b> 22:18  <b>coordination</b>                  22:16 23:1  <b>corporation</b> 12:8                  13:1 24:24 25:21  <b>corporation's</b> 8:21                  9:7 21:23  <b>corps</b> 22:18  <b>correct</b> 24:5  <b>corrected</b> 26:11  <b>correctly</b> 28:7  <b>counsel</b> 28:11  <b>count</b> 19:16  <b>court</b> 1:12 4:15                  5:20 20:2  <b>covid</b> 3:18 8:24  <b>cross</b> 9:21,24 10:2                  10:3 16:10  <b>currently</b> 17:10  <b>currents</b> 26:1</p>
<p style="text-align: center;"><b>c</b></p>			
<p><b>c</b> 28:1,1  <b>c&amp;d</b> 22:5,10 23:5  <b>called</b> 19:11 22:2  <b>canal</b> 9:13,16                  13:22 14:7 15:4,5                  15:10,12 17:20                  21:10,18,21 22:1,5                  22:6,10 23:3,5  <b>capital</b> 13:4  <b>carney</b> 8:22  <b>carrie</b> 1:12  <b>carried</b> 21:15  <b>cases</b> 16:12  <b>causing</b> 17:13  <b>central</b> 9:23</p>			<p style="text-align: center;"><b>d</b></p> <p><b>d</b> 2:1  <b>damage</b> 14:14  <b>date</b> 3:6  <b>day</b> 10:5 18:24                  28:14  <b>days</b> 25:19  <b>de</b> 1:23  <b>debris</b> 16:2  <b>decision</b> 6:4,16,17                  7:15,17  <b>declared</b> 8:23  <b>dedicated</b> 4:20,23  <b>deeds</b> 24:20  <b>deficiencies</b> 26:11</p>

<p><b>delaware</b> 1:1,2,23 9:12,15 10:6 11:8 13:2,9,13 14:1,2 17:2 21:9,10,16,21 22:21,23,24 26:5 <b>delaware's</b> 3:8,17 <b>delaware.gov</b> 7:3 <b>demands</b> 26:10 <b>denied</b> 26:10 <b>depart</b> 24:7 <b>department</b> 1:2 3:8 4:2 6:17 7:13 7:20 11:20 20:6 <b>department's</b> 2:5 4:7 8:2 11:15,21 11:22 19:3,5 <b>depicted</b> 13:20 <b>depiction</b> 13:24 <b>described</b> 22:3 <b>desired</b> 7:23 <b>desktop</b> 10:12 <b>destroy</b> 22:2 <b>details</b> 4:23 12:14 12:23 16:6 <b>deteriorated</b> 15:15 <b>deteriorating</b> 17:11 <b>deterioration</b> 14:14 15:1,24 <b>determine</b> 10:12 <b>development</b> 12:8 14:4 <b>devine</b> 1:16 2:5 12:1,5,5 <b>directive</b> 21:23 <b>discuss</b> 12:12,23 <b>discussed</b> 12:12 <b>district</b> 13:22 14:7 15:4,5,10,13 17:20 <b>districts</b> 22:4</p>	<p><b>division</b> 1:15 8:1 8:18 <b>dnrec</b> 1:15 4:17 5:7 6:19 7:4,7,18 18:24 25:12 <b>dnrec's</b> 3:16 4:14 5:3 6:6 11:7 18:22 <b>dnrehearingco...</b> 7:3 <b>docket</b> 1:6 <b>doing</b> 17:2 <b>drain</b> 18:1 <b>drains</b> 16:19 <b>drawings</b> 22:12 <b>due</b> 3:18 8:23 <b>duffield</b> 1:16,17 11:24 12:6,6 16:8 <b>dug</b> 21:11 <b>dupont</b> 1:5 3:11 5:1 8:20 9:6 13:1 13:4,16,22 14:4 16:23 20:15 21:22 24:20,24</p>	<p><b>encourages</b> 20:6 <b>endpoints</b> 9:13 <b>engineer</b> 12:17 <b>engineering</b> 22:12 <b>engineers</b> 22:19 <b>ensure</b> 5:13 6:20 <b>enter</b> 18:6 <b>entire</b> 26:13 <b>entry</b> 2:5,6 <b>environmental</b> 1:3 3:9 8:17 <b>equally</b> 7:14 <b>erica</b> 2:9 19:13 21:4,7 <b>erosion</b> 14:12,14 16:1 17:13 <b>established</b> 13:2 19:3 <b>evaluating</b> 10:15 <b>evening</b> 3:1,7 8:16 9:5 12:15 <b>event</b> 4:3 <b>eventually</b> 6:1 <b>evidence</b> 22:14 <b>exact</b> 7:13 <b>example</b> 15:14 <b>examples</b> 15:24 <b>exhibit</b> 2:6 10:23 11:2,4,6,9,11 18:7 18:12 <b>exhibits</b> 2:5 6:1 10:21 11:20,21,21 <b>existing</b> 10:3 14:11 15:11,16,21 16:12 <b>expect</b> 22:17 <b>experienced</b> 14:12 <b>expired</b> 25:18 <b>extending</b> 9:18 <b>extends</b> 15:8</p>	<p><b>extension</b> 17:16 25:23</p>
	<p style="text-align: center;"><b>e</b></p> <p><b>e</b> 2:1 28:1,1 <b>east</b> 9:12,15,19 <b>either</b> 15:24 20:22 24:11 <b>electric</b> 16:19 17:24 <b>electronic</b> 7:11 9:3 11:1,19 21:20 <b>electronically</b> 4:3 18:5,11 <b>elm</b> 25:3 <b>email</b> 7:2 <b>emergency</b> 3:18 8:23 10:24 16:21 <b>enable</b> 7:19 <b>encourage</b> 4:21</p>		<p style="text-align: center;"><b>f</b></p> <p><b>f</b> 28:1 <b>facebook</b> 7:9 <b>failed</b> 25:21,24 26:2,3 <b>false</b> 22:9 <b>falsehood</b> 24:17 <b>far</b> 20:23 25:5 <b>fdrpc</b> 22:9,11,17 23:5 <b>february</b> 5:17 6:23 7:13 20:7 24:1 26:23 <b>federal</b> 13:11 22:16 25:6 26:12 <b>federally</b> 25:10 <b>feed</b> 19:24 <b>feel</b> 24:17 <b>feet</b> 13:19 <b>fifth</b> 9:19 <b>fill</b> 17:7 22:8 <b>final</b> 7:15 <b>find</b> 24:23 <b>finish</b> 20:4 <b>fire</b> 15:11 <b>first</b> 3:19 10:23 12:3 19:12 20:11 22:7,20 23:6 <b>fished</b> 21:16 <b>flank</b> 22:4 <b>flood</b> 16:22 <b>flooding</b> 16:21 <b>flows</b> 16:1 <b>fly</b> 12:13 <b>follow</b> 25:21 <b>following</b> 5:6,16 6:3 19:11 <b>foot</b> 9:8 16:18</p>



<p><b>foregoing</b> 28:4  <b>foreground</b> 14:3,4  <b>foremost</b> 3:19  <b>form</b> 7:2 9:9 25:2  <b>formal</b> 3:15 5:19 7:19  <b>former</b> 15:15  <b>formerly</b> 14:10 15:19  <b>fort</b> 1:5 3:11 4:24 8:20 9:6 12:7,24 13:4,16,22 14:3 16:23 20:15 21:22 24:20,24 25:20  <b>forth</b> 18:21  <b>found</b> 5:2  <b>four</b> 5:21 19:10  <b>fourth</b> 11:6 19:13  <b>free</b> 14:23  <b>friday</b> 6:22 26:23  <b>full</b> 9:17 23:5  <b>furthermore</b> 23:4  <b>future</b> 17:21,24 25:14 26:8</p>	<p><b>given</b> 10:16  <b>go</b> 3:3 8:4 23:17  <b>going</b> 12:19 16:4,5 16:17 17:23 18:17 20:17,18,24 26:1,3  <b>gold</b> 1:12 9:13  <b>good</b> 3:1 8:12,16  <b>gorski</b> 1:17 2:6 12:16 16:5,7,7 18:8,15  <b>government</b> 13:11 24:20 26:12  <b>governor</b> 8:22  <b>granted</b> 20:8  <b>grates</b> 25:16  <b>great</b> 8:14  <b>ground</b> 17:24  <b>group</b> 9:2  <b>growing</b> 14:12,23 15:23  <b>grown</b> 15:18  <b>guard</b> 26:4</p>	<p><b>hearings</b> 5:7  <b>held</b> 20:21  <b>hello</b> 12:5 16:7  <b>heritage</b> 22:1  <b>hi</b> 21:6  <b>highlighted</b> 15:16  <b>historic</b> 22:1,4,15 22:21,22,23 23:6  <b>historical</b> 22:20 23:7  <b>historically</b> 14:16  <b>history</b> 12:20 21:11 22:1  <b>homes</b> 17:22 18:1  <b>honor</b> 22:1  <b>hundred</b> 13:19  <b>hunted</b> 21:17</p>	<p><b>independently</b> 3:21  <b>indicated</b> 7:4 28:6  <b>indicator</b> 25:14  <b>industrial</b> 21:12  <b>infrastructure</b> 13:13 17:14,18,23  <b>infrequent</b> 14:19  <b>install</b> 9:7  <b>installed</b> 15:6  <b>instruction</b> 6:12  <b>instructions</b> 23:18  <b>instrument</b> 24:23 25:6 26:11  <b>integral</b> 21:10  <b>interest</b> 4:4  <b>interested</b> 28:12  <b>interior</b> 16:22  <b>introduce</b> 10:20  <b>introduction</b> 2:3  <b>introductory</b> 4:5  <b>issue</b> 6:3  <b>issued</b> 7:6  <b>issues</b> 22:6  <b>items</b> 10:14</p>
<p><b>g</b></p>	<p><b>h</b></p>	<p><b>i</b></p>	<p><b>j</b></p>
<p><b>gained</b> 25:18  <b>garvin</b> 3:14 6:2 7:18  <b>garvin's</b> 7:22  <b>gathered</b> 3:23  <b>gatherings</b> 9:2  <b>generally</b> 13:17  <b>generate</b> 3:24  <b>generated</b> 4:8 5:12 6:21  <b>generations</b> 21:16  <b>geo</b> 26:2  <b>geometry</b> 15:2 17:10  <b>give</b> 12:20,22</p>	<p><b>hand</b> 7:24 21:11 28:14  <b>happening</b> 20:24  <b>health</b> 8:23  <b>hearing</b> 1:9,14 2:3 2:10 3:1,2,10,14 3:17,19 4:6,11,17 4:19,22,22 5:1,4,9 5:11,22,24 6:1,6,8 7:2,5,19 8:6,9,11 8:14 9:4 10:22 11:9,12,13,18 18:4 18:9,16,21,22,23 19:1,9 20:14,21 21:2,6,8 23:8,15 23:20,23 24:3,8 26:16,18,21,23 27:2,2,4 28:4</p>	<p><b>identity</b> 19:18 21:11  <b>image</b> 9:11,14 17:1  <b>images</b> 21:18  <b>implies</b> 21:22  <b>important</b> 6:15 21:20  <b>improvements</b> 13:5 22:3  <b>inaccurate</b> 24:17  <b>include</b> 23:5  <b>included</b> 10:15 22:12 26:12  <b>includes</b> 10:11 17:19  <b>including</b> 10:3,4 19:6  <b>inclusion</b> 6:21  <b>incorporated</b> 5:11 20:2  <b>incorrect</b> 25:11</p>	<p><b>jack</b> 17:17  <b>january</b> 1:11 3:6 28:15  <b>jeffrey</b> 1:18  <b>joined</b> 3:3 4:3  <b>joining</b> 27:1  <b>journal</b> 10:7 11:8</p>
			<p><b>k</b></p>
			<p><b>kept</b> 14:23  <b>kin</b> 28:11  <b>kind</b> 12:12 14:2  <b>know</b> 7:21 12:24 19:23 20:20</p>

<p><b>known</b> 13:22  <b>konkus</b> 2:9 19:13  19:14 23:10,11,12  23:14,17,20,22  24:2,6,9,14,15,16  26:17</p>	<p><b>located</b> 13:16  <b>location</b> 9:12  <b>locations</b> 3:22  <b>long</b> 7:12 25:18  <b>longer</b> 14:13  <b>looked</b> 17:4,6  <b>looking</b> 26:8  <b>looks</b> 17:6  <b>lot</b> 17:22 20:15</p>	<p><b>middle</b> 15:7  <b>minute</b> 19:7 20:5  <b>minutes</b> 12:17  19:17,20 20:8  <b>mirror</b> 17:1  <b>mirrors</b> 16:12  <b>misleading</b> 24:17  <b>mohammed</b> 1:18  <b>move</b> 11:23 19:22  21:4  <b>moving</b> 24:13  <b>mules</b> 21:14  <b>mute</b> 18:17 19:22  <b>muted</b> 8:4</p>	<p><b>north</b> 13:21  <b>northern</b> 9:21  <b>notary</b> 28:17  <b>note</b> 6:16  <b>noted</b> 7:12 13:1,17  <b>notes</b> 26:14  <b>notice</b> 1:9 10:6  28:5  <b>notices</b> 7:5 11:6  <b>notification</b> 20:19  <b>notified</b> 20:22  <b>notify</b> 26:4  <b>number</b> 6:15 11:2  11:4,9,11 14:19  18:12</p>
<p><b>l</b></p>	<p><b>m</b></p>	<p><b>n</b></p>	<p><b>o</b></p>
<p><b>lacks</b> 22:24  <b>lamppost</b> 21:19  <b>land</b> 3:12 8:1,18  24:23 25:4,7 26:9  <b>lands</b> 1:5 9:10  11:3  <b>landward</b> 15:10  <b>lastly</b> 6:15 7:17  <b>law</b> 5:2 11:2  <b>left</b> 14:2 15:8  16:16,24 17:5  <b>legal</b> 1:22  <b>legislature</b> 13:2  <b>letting</b> 20:20  <b>limit</b> 19:7  <b>limited</b> 5:8 23:21  <b>limiting</b> 19:8  <b>lindsey</b> 2:9 19:13  21:4,5,5,6,7,7,9  23:9  <b>line</b> 22:7 25:5,8,10  <b>linear</b> 9:8  <b>lines</b> 16:20 17:17  17:24 25:3  <b>link</b> 7:2  <b>list</b> 3:24 25:5  <b>listed</b> 5:3  <b>little</b> 12:13,19,21  16:6,11,13,14  20:17  <b>live</b> 19:24 20:15  <b>lived</b> 21:17  <b>living</b> 20:18</p>	<p><b>machine</b> 28:7  <b>main</b> 17:9 22:23  <b>maintain</b> 15:2  <b>maintained</b> 14:22  <b>maintaining</b> 17:9  <b>maintenance</b>  14:17,20,21 16:3  <b>making</b> 7:15 19:6  <b>march</b> 8:22  <b>marina</b> 14:2 17:2  <b>mark</b> 11:20 18:10  <b>markell</b> 17:17  <b>material</b> 17:12  <b>materials</b> 10:17  <b>matter</b> 4:4,9,20,23  5:9,10,12,15 6:5  6:21 7:6,16,18,20  19:8  <b>mechanism</b> 7:19  <b>mechanisms</b> 7:11  <b>media</b> 7:8 21:20  <b>meeting</b> 11:1  <b>meetings</b> 9:3  <b>mention</b> 24:21  <b>mentioned</b> 14:7  17:8 24:18  <b>message</b> 24:10  <b>messaging</b> 7:9  <b>methods</b> 10:16  <b>mid</b> 1:22</p>	<p><b>name</b> 3:13 8:17  12:3 20:11 21:22  24:15  <b>national</b> 22:15,19  22:20,22 23:6  <b>natural</b> 1:2 3:9  <b>navigable</b> 26:5  <b>nearly</b> 25:18  <b>necessitated</b> 3:17  <b>needs</b> 25:5  <b>neighborhood</b>  20:24  <b>neither</b> 25:2 28:11  <b>newman</b> 1:14 2:3  2:10 3:1,13 8:6,9  8:11,14 10:22  11:13,18 18:4,9,16  20:14 21:2,6,8  23:8,15,20,23 24:3  24:8 26:16  <b>news</b> 10:6,7,24  11:8,8  <b>ninth</b> 13:19  <b>noon</b> 18:24</p>	<p><b>objection</b> 10:9  <b>occupied</b> 22:10  <b>occurred</b> 15:24  <b>october</b> 10:7  <b>offer</b> 4:13 5:14  6:10,20,23 18:20  18:23 19:11,23  <b>offering</b> 6:13 19:5  <b>officer</b> 1:14 2:3,10  3:1,14 8:6,9,11,14  10:22 11:13,18  18:4,9,16 20:14  21:2,6,8 22:22  23:8,15,20,23 24:3  24:8 26:16  <b>officer's</b> 6:2  <b>official</b> 5:19 28:14  <b>okay</b> 8:4,9,11,14  16:7 18:9 21:9  23:22 24:2,3,8  <b>once</b> 4:10 25:22  <b>ongoing</b> 3:18  <b>online</b> 5:2 23:11  <b>open</b> 5:16 6:22  26:24</p>

<p><b>opportunity</b> 4:12 9:5 18:20</p> <p><b>order</b> 5:13 6:3 8:24 19:2,11</p> <p><b>original</b> 22:5,9 23:5 25:23</p> <p><b>outcome</b> 28:12</p> <p><b>outfalls</b> 25:16,20 25:22</p> <p><b>outside</b> 15:6 17:23</p> <p><b>overview</b> 12:21</p> <p><b>owned</b> 25:4</p> <p><b>owner</b> 25:7</p>	<p><b>period</b> 10:6,8 20:5</p> <p><b>periodically</b> 14:24</p> <p><b>permit</b> 1:5 3:10,12 9:9,10</p> <p><b>permits</b> 25:12,17 25:23,24 26:9</p> <p><b>permitted</b> 6:7</p> <p><b>person</b> 19:22</p> <p><b>persons</b> 4:11</p> <p><b>pertinent</b> 5:10</p> <p><b>photo</b> 15:9</p> <p><b>photograph</b> 17:5</p> <p><b>physical</b> 7:4 22:5</p> <p><b>physically</b> 3:23</p> <p><b>picture</b> 15:3,7 16:24</p> <p><b>pictures</b> 15:20</p> <p><b>place</b> 5:7 18:17 20:17,19 26:2 28:6</p> <p><b>placed</b> 10:5,17 17:3 19:21 22:8</p> <p><b>placement</b> 10:16</p> <p><b>plans</b> 25:21</p> <p><b>platform</b> 3:8</p> <p><b>platforms</b> 7:8</p> <p><b>please</b> 5:6 7:10 10:22 12:3 19:23 20:11</p> <p><b>pockets</b> 14:13 16:13 17:13</p> <p><b>point</b> 15:22 25:1 26:14</p> <p><b>pole</b> 10:3,4</p> <p><b>portion</b> 6:11 12:20 13:7,12,16 26:18</p> <p><b>portions</b> 14:6</p> <p><b>possible</b> 19:7</p> <p><b>postal</b> 7:3</p> <p><b>posted</b> 4:19 11:7</p>	<p><b>pre</b> 4:11 6:9 18:20 18:24 19:4</p> <p><b>prepare</b> 4:16</p> <p><b>prepared</b> 4:18</p> <p><b>present</b> 1:18 4:1 4:16 8:3 12:2 15:19 16:11</p> <p><b>presentation</b> 2:4,5 2:6 6:11 8:2 10:18 11:10,16,22,24 16:5 18:3,5,6,10 18:14</p> <p><b>presentations</b> 4:8 4:10 5:5 18:18</p> <p><b>presented</b> 10:19 11:10</p> <p><b>presenting</b> 8:19 12:15</p> <p><b>preservation</b> 3:11 5:1 8:21 9:6 12:8 13:1 21:23,24 22:15,23</p> <p><b>preserve</b> 13:3</p> <p><b>pretty</b> 20:16</p> <p><b>prevent</b> 8:24 14:24</p> <p><b>previously</b> 6:19 7:6 13:17</p> <p><b>primarily</b> 14:9,21 16:14</p> <p><b>prime</b> 21:23</p> <p><b>print</b> 21:19</p> <p><b>prior</b> 7:15 11:12 22:8,10</p> <p><b>probably</b> 25:14</p> <p><b>problem</b> 24:9</p> <p><b>procedural</b> 10:11</p> <p><b>proceed</b> 8:15 21:8</p> <p><b>proceeding</b> 3:15 4:1 5:16,19 6:12</p>	<p><b>process</b> 6:4 19:4</p> <p><b>proclamation</b> 10:24</p> <p><b>project</b> 9:11,15,17 9:21,24 10:2,5 12:10,18,20 13:16 15:5,6,10 16:6 17:8,21 24:19 25:24</p> <p><b>projected</b> 9:14</p> <p><b>projects</b> 12:22</p> <p><b>promenade</b> 15:11 16:17,18 17:16,19</p> <p><b>proof</b> 23:1</p> <p><b>property</b> 16:23 17:3 22:22</p> <p><b>proposed</b> 4:13,24 5:23 6:18 9:22,23 10:12,15,15 11:19 14:5 15:19 20:16 20:20</p> <p><b>proposing</b> 12:21 14:20</p> <p><b>protect</b> 13:3 17:14 17:21 21:24</p> <p><b>protocols</b> 3:17 4:14 5:6 6:6 18:21 19:5</p> <p><b>provide</b> 3:7 4:7 8:2 9:5 16:11 19:24 23:24 24:4 24:11,14 26:21,22</p> <p><b>provided</b> 4:12 6:13 24:21 26:12</p> <p><b>public</b> 1:9 2:7 3:10 5:7 6:23 7:5,21,21 8:23 9:1,4,5 10:5 10:8 11:1,6,9,12 17:19 18:22 26:14 26:17 27:2 28:17</p>
<b>p</b>			
<p><b>p</b> 1:6</p> <p><b>p.m.</b> 1:11 3:7 27:3 27:4</p> <p><b>page</b> 2:2 4:19,23 5:2 7:2,5 18:22</p> <p><b>pandemic</b> 3:18</p> <p><b>parcel</b> 24:18 25:2</p> <p><b>park</b> 22:19,21 23:7</p> <p><b>part</b> 10:14 21:10 22:13</p> <p><b>participants</b> 1:10 28:6,10</p> <p><b>participating</b> 3:21</p> <p><b>particular</b> 24:21</p> <p><b>partly</b> 14:7</p> <p><b>partners</b> 22:17</p> <p><b>parts</b> 17:13</p> <p><b>party</b> 28:11</p> <p><b>passed</b> 24:22</p> <p><b>passes</b> 24:23</p> <p><b>paved</b> 16:18</p> <p><b>peaches</b> 21:15</p> <p><b>performance</b> 25:14,15 26:7,8,9</p> <p><b>performed</b> 14:21</p>			

<p><b>published</b> 10:6  <b>purpose</b> 5:21 9:4  <b>pursuant</b> 1:9 4:17                  28:5</p>	<p><b>referenced</b> 16:17  <b>reflected</b> 25:4  <b>regard</b> 5:22 6:12                  6:18 19:5,14  <b>regarding</b> 7:17                  11:3  <b>region</b> 1:22  <b>registered</b> 4:11                  6:9 18:20,24                  19:10  <b>registration</b> 19:4  <b>regulated</b> 25:10  <b>regulations</b> 11:3  <b>regulatory</b> 10:10                  10:13  <b>relating</b> 22:6  <b>release</b> 10:24  <b>relevant</b> 22:16  <b>remain</b> 5:6,16                  6:22 22:6,11                  26:24  <b>remarks</b> 2:10 4:6  <b>remember</b> 7:10  <b>remnants</b> 15:14                  22:2,5,10  <b>remote</b> 1:10  <b>removed</b> 14:24                  15:19  <b>replied</b> 22:9  <b>report</b> 6:2  <b>reporter</b> 1:12 2:11                  4:15 20:2  <b>reporter's</b> 5:20  <b>representation</b>                  9:20  <b>represented</b> 9:13  <b>required</b> 14:24  <b>requirement</b> 4:17                  10:13  <b>resident</b> 20:18</p>	<p><b>residents</b> 21:16  <b>resources</b> 1:3 3:9  <b>respect</b> 25:20 26:9  <b>respecting</b> 19:7  <b>respective</b> 3:22  <b>result</b> 19:3  <b>resulted</b> 16:2  <b>results</b> 16:2  <b>returned</b> 26:10  <b>revetment</b> 9:8,22                  10:17 12:22 13:15                  14:9 15:7,13                  16:11  <b>revetted</b> 14:5  <b>review</b> 6:4 10:10                  10:12,14 22:18  <b>reviewed</b> 6:2  <b>revolution</b> 21:13  <b>right</b> 14:4 15:4                  16:24 17:5 20:16  <b>rip</b> 9:8,22 10:17                  14:10,11,17 15:16                  15:18 16:10 17:3                  20:16 26:3  <b>river</b> 22:24  <b>room</b> 3:21  <b>roughly</b> 9:20 10:1                  13:20,20  <b>route</b> 21:14</p>	<p><b>secretary</b> 3:13 6:2                  6:3 7:15,18,22  <b>secretary's</b> 5:14  <b>section</b> 5:3 8:2,19                  9:22,24 10:4 15:7                  16:10 22:15,18  <b>sections</b> 10:2  <b>see</b> 13:15 14:1,5,6                  15:5,9 16:9  <b>seek</b> 21:24 23:5  <b>senior</b> 12:17  <b>sent</b> 11:7  <b>september</b> 10:7  <b>serve</b> 3:14 16:20  <b>service</b> 22:19  <b>services</b> 7:4  <b>session</b> 6:7  <b>set</b> 18:21 24:20  <b>seven</b> 6:15  <b>severe</b> 14:14  <b>shaded</b> 13:20  <b>shallower</b> 16:14  <b>shoreline</b> 9:8                  14:18  <b>shorthand</b> 28:7  <b>showing</b> 15:23  <b>shown</b> 9:12 15:17                  15:20 16:10  <b>shrubs</b> 14:23                  15:18,22  <b>side</b> 9:12 14:1 15:4                  15:10,12 16:16                  17:2,5,5,20  <b>sides</b> 22:4  <b>signature</b> 28:16  <b>significance</b> 23:6  <b>silt</b> 17:7  <b>silted</b> 15:21,22  <b>site</b> 9:15 12:20                  13:7 17:18 25:9</p>
<p><b>q</b></p>			
<p><b>q&amp;a</b> 6:7  <b>quicker</b> 12:13</p>			
<p><b>r</b></p>			
<p><b>r</b> 28:1  <b>rahn</b> 2:8 19:12                  20:11,13,13,15                  21:3  <b>railroad</b> 21:14  <b>ramp</b> 9:18 13:18  <b>randol</b> 1:18  <b>rap</b> 9:8,22 10:17                  14:10,11,17 15:16                  15:18,21 16:10                  17:3 20:16 26:3  <b>read</b> 23:18,19  <b>ready</b> 3:3 8:3  <b>reason</b> 20:9  <b>reasons</b> 6:5  <b>rebecca</b> 1:15 2:4                  8:17 16:9  <b>rebuild</b> 14:10  <b>received</b> 4:20 5:8                  7:11,12 10:8                  11:11,19 18:5,10  <b>record</b> 4:2,8 5:11                  5:15,18,22,23 6:21                  6:22 12:4 18:12                  20:3,12 24:12                  26:23 28:10  <b>recorded</b> 28:7  <b>recreational</b> 13:3  <b>redevelopment</b>                  3:11 5:1 8:20 9:6                  12:8 13:1,10                  21:22</p>			
		<p><b>s</b></p>	
		<p><b>sailed</b> 21:17  <b>sascha</b> 1:18  <b>saw</b> 25:16  <b>schedules</b> 3:5  <b>scientist</b> 8:17  <b>scope</b> 9:17  <b>screen</b> 19:16  <b>seal</b> 28:14  <b>second</b> 19:13                  22:14</p>	

<p><b>six</b> 6:9  <b>size</b> 10:16  <b>slide</b> 8:10  <b>slope</b> 10:15 12:21  14:5,10,11,13,15  14:15,16,22 15:1  16:2,12,15 17:12  17:13,15  <b>slopes</b> 16:11  <b>sloughing</b> 14:15  16:3 17:12  <b>social</b> 7:8  <b>solely</b> 5:9  <b>solutions</b> 1:22  <b>soon</b> 4:20  <b>south</b> 9:18 13:23  <b>southern</b> 10:1  <b>speak</b> 6:10 8:6  19:12 20:9  <b>speaker</b> 20:4  <b>speaker's</b> 19:17,18  19:21  <b>speakers</b> 2:7  <b>stability</b> 15:1  <b>stabilization</b> 9:9  <b>staff</b> 4:7  <b>stakeholders</b> 11:7  <b>standard</b> 3:17  4:14 6:6  <b>stars</b> 9:13  <b>start</b> 26:13  <b>starting</b> 26:14  <b>state</b> 1:1 3:8,18  8:23 10:6,23 11:2  11:8 12:3 13:12  13:12 20:11 22:20  22:21 23:6  <b>stated</b> 6:19  <b>statement</b> 23:19  <b>statements</b> 28:6  28:10</p>	<p><b>statutory</b> 4:17  5:21  <b>steamers</b> 21:15  <b>steeper</b> 16:13  <b>steve</b> 1:17 2:6  12:16 16:5,7  <b>stone</b> 10:15  <b>stops</b> 13:18  <b>storm</b> 16:1,19 18:1  <b>street</b> 9:19 13:19  22:23 25:3  <b>structure</b> 10:13  <b>structures</b> 22:8,11  <b>subaqueous</b> 1:5  3:12 8:1,18 9:10  11:3 26:9  <b>subject</b> 5:9,10  19:8  <b>submit</b> 20:6  <b>submitted</b> 3:11  4:24 7:1,8,22 8:20  9:18 22:12 25:2  <b>successfully</b> 3:3  <b>suggest</b> 23:4  <b>suite</b> 1:23  <b>superintendent</b>  22:20  <b>supervision</b> 28:8  <b>surprised</b> 20:17  <b>susan</b> 2:8 19:12  20:10,13  <b>swam</b> 21:16  <b>systems</b> 18:1</p> <p style="text-align: center;"><b>t</b></p> <p><b>t</b> 28:1,1  <b>take</b> 12:16  <b>taken</b> 1:9 28:5  <b>talk</b> 12:9,19 16:5  <b>talking</b> 13:7  <b>tax</b> 24:18 25:2</p>	<p><b>termination</b> 17:18  <b>terms</b> 26:7  <b>text</b> 7:9  <b>thank</b> 3:4 4:4 8:16  11:13,18 12:9  16:6 18:4,8,15,16  20:14 21:2 23:7,8  24:15 26:15,16,18  27:1,3  <b>thereof</b> 28:12  <b>theresa</b> 1:14 3:13  10:20  <b>things</b> 12:11 13:3  <b>think</b> 8:13 12:11  26:7  <b>third</b> 9:21,23 10:2  19:13  <b>thoroughly</b> 7:20  <b>threat</b> 8:24  <b>three</b> 5:18 17:6  19:7,16,20 20:5,8  25:11  <b>thursday</b> 1:11 3:6  <b>tidal</b> 14:22  <b>tide</b> 25:16  <b>tim</b> 2:9 19:14  23:11,16 24:16  <b>time</b> 3:4,4,6 6:14  12:9 19:7,15 20:5  20:8 26:15 28:5  <b>timer</b> 19:15,19  <b>today</b> 3:5 13:8  21:18  <b>tomatoes</b> 21:15  <b>tonight</b> 3:2,24 5:5  5:19,23 6:13,17  7:19 19:2 20:3,21  24:16  <b>tonight's</b> 3:15 4:22  5:4,9,16,21,24  6:11 18:21 26:18</p>	<p>26:21  <b>top</b> 16:16 17:14,15  <b>tourists</b> 21:15  <b>towed</b> 21:14  <b>town</b> 21:19  <b>trail</b> 17:17  <b>transcribed</b> 20:1  28:8  <b>transcript</b> 4:16,19  5:20,24 28:9  <b>transcription</b> 28:9  <b>transferred</b> 24:19  <b>transition</b> 9:2  <b>transmission</b> 9:1  <b>transparent</b> 20:23  <b>treated</b> 14:16  <b>tree</b> 14:14  <b>trees</b> 14:12,23  15:18,22  <b>true</b> 28:10  <b>trust</b> 22:22  <b>turbidity</b> 26:1  <b>turn</b> 16:4 18:19  19:17 24:13  <b>turning</b> 4:6  <b>twice</b> 25:22  <b>twitter</b> 7:8  <b>two</b> 5:13 10:2  16:11 22:6  <b>typical</b> 16:10  <b>typically</b> 14:24</p> <p style="text-align: center;"><b>u</b></p> <p><b>u.s.</b> 7:3 22:18 26:4  <b>ultimate</b> 7:17  <b>ultimately</b> 6:3  <b>unable</b> 20:4 24:10  <b>underground</b>  21:14  <b>understanding</b>  25:10</p>
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<p><b>unmuted</b> 19:18 20:11 23:11,14 <b>unmuting</b> 11:24 <b>unnecessarily</b> 9:1 9:1 <b>unstable</b> 16:2 17:11 <b>use</b> 26:1,2 <b>usps</b> 7:11 <b>utilities</b> 16:19</p>	<p><b>water</b> 13:13 <b>waterborne</b> 21:13 <b>waters</b> 8:1,18 <b>waterway</b> 24:22 26:6 <b>wave</b> 17:11 <b>way</b> 15:11 17:17 24:11 <b>ways</b> 7:21 <b>we've</b> 15:15 <b>web</b> 4:19,23 5:1 7:2,5 18:22 <b>webex</b> 3:24 <b>website</b> 5:3 11:7 <b>weigh</b> 23:2 <b>weight</b> 7:14 <b>wetland</b> 25:10 <b>wetlands</b> 8:1,18 <b>wide</b> 16:18 <b>wilmington</b> 1:23 <b>wish</b> 6:24 <b>wishes</b> 5:14 6:19 <b>wishing</b> 18:22 <b>witness</b> 28:14 <b>work</b> 14:20,21 15:5 25:9,16,18,23 26:4 <b>world</b> 21:13 <b>writing</b> 20:7 <b>written</b> 5:24 6:23 7:7 10:9 23:24 24:11 26:22</p>	<p style="text-align: center;"><b>z</b></p> <p><b>zoomed</b> 9:14</p>
<p><b>v</b></p>		
<p><b>various</b> 7:21 <b>vegetation</b> 17:7 <b>vents</b> 16:22 <b>verbal</b> 6:10,13 18:20,23 19:5,12 24:4,14 <b>verbatim</b> 4:16 5:20 <b>veritext</b> 1:22 <b>versions</b> 11:19 <b>vet</b> 7:20 <b>video</b> 19:24 <b>videoconferenci...</b> 1:10 <b>virtual</b> 3:7,10 5:10 18:23 27:2 <b>virtually</b> 3:20 4:1 4:15 <b>visible</b> 9:14 <b>visit</b> 4:22 <b>visual</b> 19:15</p>	<p><b>x</b></p>	
<p><b>w</b> 1:6 <b>wake</b> 17:11 <b>walkway</b> 17:20 <b>want</b> 4:3 23:13 27:1 <b>war</b> 21:12,13</p>	<p><b>x</b> 2:1</p>	
	<p><b>y</b></p>	
	<p><b>years</b> 14:19 17:6 <b>yesterday</b> 25:17 <b>youtube</b> 7:9</p>	