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ENVIRONMENTAL RESOURCES, INC.

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April 25, 2005

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DELAWARE COASTAL MANAGEMENT

Ms Sarah Cooksey, Administrator
Coastal Management Program
Division of Soil & Water Resources
Department of Natural Resources
& Environmental Control
89 Kings Highway
Dover, DE 19901

RE: Request for Coastal Zone Consistency Determination
Swains Wharf Marina
Sussex County, Delaware
Applicant: G. Walter Swain and Peter Russo

Dear Ms Cooksey:

On behalf of Mr. G. Walter Swain and Peter Russo, I am writing your office to request a Consistency Determination with respect to the Delaware Coastal Management Program as part of our application to the US Army Corps of Engineers for a Department of the Army permit. Mr. Swain and Mr. Russo are joint owners of property at the confluence of the Mispillion River and Cedar Creek formerly known as Dot's Docks. The proposed project consists of reconstructing and expanding an existing marina facility that was destroyed by a storm in 1991. The applicants, G. Walter Swain and Peter Russo, have determined the proposed reconstruction and expansion complies with Delaware's approved coastal zone management program and will be conducted in a manner consistent with such program.

The specific project involves the reconstruction and expansion of a former 26 slip commercial marina. Activities will include construction of two docks, 460' x 6' and 185' x 6'; connected to land by three piers, 145' x 8' and 91' x 8' (2); and a boat ramp 100' x 22'. The expanded marina will have 50 wet slips; 38 - 25' long x 12' wide and 12 - 40' long x 15' wide with tapered finger piers having a maximum width of 3 feet.

Shoreline protection will be provided by a combination of riprap and tide marsh planting. The riprap will be located more toward the top of the shoreline slope to keep storm tides from washing over the parking lot and eroding the top of the slope. The riprap will cover 388 linear feet of the shore. The shore below the riprap down to elevation 2.0 will be protected by establishing *Spartina alterniflora.*

The uplands will be prepared by trucking in sandy fill and increasing site elevations near the shore. The site will be graded so any runoff flows towards the road then to the north and south into wet swales established along the edge of the property. The swale bottoms will be 8 feet wide and planted with *Spartina alterniflora* on a 2 foot grid. The south swale will be 265 feet long and the north swale will be 157 feet long. Each swale will have a low stone check dam at the outlet end.

Most of the uplands will be covered with crushed stone for the circular driveway and parking area. Parking will consist of 32- 10' x 20' stalls for cars, 6- 15' x 20' stall for handicap parking and 14 - 20' x 40' stalls for trailers.

The site has been used as a marina since before the 1930's. There was considerable boat activity in the area at that time, including a fish processing factory across Cedar Creek on the south side of the inlet that operated around 1900. The marina site was used by recreational fisherman, commercial fisherman and party boats. It was used continuously as a marina up until the storm in January, 1992 destroyed nearly all of the walkways and left the pilings. Photographs from the summer of 1992 show boats using these remaining walkways and pilings. Only parts of three walkways above the MLW line were left intact. There is currently one pier on the south end of the property which is usable.

The earliest dated permits were obtained by the previous owner, Dot Bennett, who obtained a subaqueous lands lease dated June 19, 1969 for 11 piers and two boat ramps. Each pier was 2' by 20' long extending from the shoreline. This lease was renewed in October, 1979 and November, 1990 (SL-1203/90). All leases were for a 10 year period. The last lease was also for 11 piers, although only 5 finger piers and one pier parallel to shore are present on the DNREC 1979 aerial photography. The 1988 DNREC aerial photography shows 11 piers visible. A color slide taken from the air in October, 1991 by DNREC shows 11 piers with boats present. The property was willed to G. Walter Swain by Ms Bennett. A Letter of Authorization to repair and replace two docks, sixteen piers and two boat ramps was issued to Mr. Swain, on November 6, 1992 (RR0077). At the time of the storm there were 106 mooring pilings and 26 boat slips.

A storm washed out a new opening north of the inlet between 1973 and 1979. Repairs of this breach appeared to be underway in 1988 based on aerial photography taken that year by DNREC. The actual repairs were not finished until early 1994, two years after the storm that destroyed most of the marina structure. The company doing the breach repairs (Edwin A and John O. Crandell, Inc.) used the Swain site as a staging and storage area during reconstruction of the inlet. They tied their barges and boats to the existing pilings and also removed a number of pilings and finger piers to provide truck access to the barges. These structures were to be replaced after the breach work was completed and are the newer looking pilings.

The current owners decided to wait until the inlet repairs were completed before attempting repairs to the marina. Although the current subaqueous lands lease was still valid, they decided to apply for additional slips and construct pier structures that would be more sturdy then those constructed by Ms Bennett. A subaqueous lands permit application was filed with DNREC on July 7, 1997 and a state lease for 38 slips was issued on June 1, 1998 (Sl-3807/97). At the time of application, there were three piers and seven existing slips (as listed on a plan dated May 14, 1997 by AKS Associates, Inc., Lincoln, DE). These walkways are now gone except for a pier on the south end of the property. The 1997 lease allowed the construction of 1060 linear feet of armor stone, reconstruction of two boat ramps, two piers 5' by 70', one pier 5' by 108', one dock 120' by 5 feet, one dock 162' by 5', 19 floating catwalks 25' by 4' and 17 mooring piles.

The owners applied to the US Army Corps of Engineers for a Section 10/404 permit after receiving the state permit. However, there were various delays and questions and the state permit (valid for 3 years) expired before a federal permit review was completed.

We have reviewed the DCMP policies and feel the following policies are potentially applicable:

5.A.1 Wetland Management
5.A.3 Coastal Waters Management
5.A.4 Subaqueous Lands
5.B.2. Natural Areas Management - CMP Policies for the Delaware Estuary
5.B.3. Flood Hazard Areas Management
5.C.3 Living Resources

5.A.1 Wetland Management. The site contains tidal wetlands as regulated by 7 Delaware Code Section 66, although much of the tidal wetland areas are not on the state maps. None of the tidal wetlands on the site will be impacted other than by the outflow from the two wet swales for stormwater management. Stormwater flows will be directed to these swales and away from direct flow into tidal waters or existing tidal wetlands. The swales will be established with *Spartina alterniflora* as the swale elevations will be within the elevation of existing *Spartina* stands. Additional *Spartina alterniflora* wetlands will be established along the shoreline as erosion control. All existing wetlands will be separated from construction activities by installation of silt fence and super silt fence prior to the onset of construction.

5.A.3 Coastal Waters Management.

Although the site has been used in the past as a marina, we feel this is good location for a marina as there is good flushing of adjacent waters, the navigation channel is within close proximity, it is close to Delaware Bay so little travel is needed within tidal rivers to reach the boaters destination, the location is somewhat protected by a man-made jetty and no dredging is required.

This project is proposing 50 wet slips within State waters. Wet slips are proposed for several reasons. The site has a history as a wet slip marina. The location is well suited for wet slips being near the mouth of the river and adjacent to the maintained navigation channel. Most of the customers will be fisherman who want easy access to their boats at certain times of day; early in the morning and in the evening. Many boat owners want the advantage of their boats ready to leave the dock with a minimum of time, like after work so they can fish for a few hours. If they trailer their boat, a short time available on the water does not make the effort of launching and retrieving the boat worth while. A boat in the water where the owner drives up and is on their way in a few minutes is a different situation. Dry stack storage requires at least one staff person to be present at the times when boats can launch. Since many fisherman leave or return in the dark, a lift operator would have to be on-site 18+ hours a day during the peak fishing season. A wet slip operation for fisherman would not require the same level of staffing.

Dry-stack storage is questionably feasible for a property of this size and type. Marina industry experts feel the optimum size dry-stack facility to maximize return is 240 racks slips. This provides for boats up to 35 feet in length stacked four boats high. A facility able to handle the larger sized boats would need to be about 130-140 feet wide to allow for the turning radius of the lift. A building of this size needs about one acre of land, required parking of 0.5 slips per boat would increase the amount of land to a total of two acres. An estimated cost for such a facility (building and parking with fork lift) is $1.16 million. Regardless of the cost, Mr. Swain only has about 2.4 acres of uplands on his property. While a smaller facility can be built, the construction cost per dry slip would be more expensive than for wet slips plus there would be higher operating expenses. The necessary rental rates would be much higher than for wet slips in the area. Dry stack is most feasible for a marina that provides a lot of boat services such as fueling, accessory sales, repairs, painting, and amenities. Since the boat is up in the air on a rack, owners tend to have more of the maintenance work and installation of extras done by the boat yard rather than doing it themselves. Thus a dry-stack is usually counted on to drive other revenue streams such as wash and rinse services, owner repair area, trailer storage, gear lockers, etc. Mostly due to site constraints, Mr. Swain is not proposing a full service marina facility, just a docking facility. He is not even proposing fueling facilities. A dry stack facility would also include the construction of a launch area where the lift would place the boat into the water. This would require at least a small area to be dredged into the shore and installation of bulkhead along the shoreline side where the lift would bring and retrieve boats. Even with a dry stack facility, a number of wet slips are needed for temporary tie up until the owners are ready to go or until the lift can retrieve the boat and put it away.

Impacts to coastal waters will be minimized through strict adherence to an approved sediment and erosion control plan (currently being finalized), stormwater management to control water quality and operational practices both of the marina operators and slip holders. Stormwater management is exempt from quantity controls due to the marina's location within the 100-year floodplain. However, quality will be controlled by directing runoff away from the creek to one of two wet swales on either

side of the property. The swales will discharge into existing tidal wetlands for additional filtering prior to the water entering tidal waters.

Vessel maintenance will only be allowed on the uplands and then only if the ground under the boat is completely covered with protective tarpaulins to catch any materials from hull stripping or refinishing. All maintenance activities conducted on the marina property will require the prior approval of the Harbor Master. Owners having boats that need professional repair will be encouraged to remove the boats to other approved locations where such repairs can be made. In water maintenance is restricted to light cleaning, polishing, etc.. There will be no provision for on land storage of detergents, solvents, oils, paints, grease waxes or applicators by slip users. All empty or discarded containers and applicators are to be removed from the marina premises by the boat owner for appropriate disposal off-site. Only "clean" trash may be disposed in the marked containers provided by the marina.

Although no pump-out facilities are planned, sewage will be strictly controlled. Land-based facilities will be portable toilets available in-season placed and maintained under contract. All vessels with in-board Type III sanitation systems, shall be equipped with securable "Y" valves and have holding tanks capable of holding as well as chemically treating all sanitary wastes until they can be properly discharged at approved pump-out stations. All Type III devices with "Y" valves must be capable of having the valve secured in the closed holding tank position while moored in the marina. Such holding tanks will be required to contain a dye tablet that would provide evidence of leakage or discharge while moored in the marina. Any boats with port-a-potty devices will be able to empty such containers into the portable toilets on the uplands. No live-aboard boats will be allowed except for overnight transient boaters. They will be required to abide by all marina rules including those regarding marine sanitation devices.

The marina will not provide any fueling facilities. While boat fuel may be brought into the marina by slip users, they will be responsible for any and all spills they cause. Marina staff will be trained in the handling of emergency clean-up of any fuel, oil or sewage spills.

5.A.4 Subaqueous Lands.

Applications have been made with the Delaware DNREC regarding permits for the reconstruction, expansion and operation of the proposed marina. Similar application has been made with the US Army Corps of Engineers for a Section 10/404 individual permit.

5.B.2. Natural Areas Management - CMP Policies for the Delaware Estuary

As stated above, every effort has been made to minimize and control any form of pollution to Cedar Creek or Mispillion River, tributaries of Delaware Bay.

5.B.3. Flood Hazard Areas Management

All construction will conform to local building and zoning requirements regarding structures or development within the 100-year floodplain.

5.C.3 Living Resources.

The proposed project will not have negative effects on the value of tidal ebb and flow of the adjacent creeks either in impacting production, reducing natural protection, increasing siltation or otherwise having an effect on estuarine waters. There will be a small increase in production and natural protection through the establishment of a fringe marsh of *Spartina alterniflora*. Habitat value for upland species of wildlife using the property will be diminished through the conversion of the vegetated areas to largely gravel parking. Use of the shoreline or existing tidal marsh will not be directly impacted, although a slight reduction in use is likely due to the presence of structures and humans. There will be no known impact to migratory bird or aquatic species. There are no known rare, threatened or endangered or unique species of plants, animals or their habitats on the property or adjoining properties. The project will not impact the production or use of shellfish beds in the area.

There are no known historic or archeological resources on the property.

The proposed project is consistent with local zoning. Adjoining parcels are in residential or commercial use.

In conclusion, it is our opinion this project is in compliance with Delaware's Coastal Management Program, as well as both state and county land planning efforts. I am enclosing copies of the Army Corps of Engineers permit application, the DNREC Subaqueous Lands permit application and appendices, and 24"x36"plan drawings. We are in the process of submitting sediment and erosion control/stormwater management plans to the Sussex Conservation District for review. If required we will provide a copy of those finalized or approved plans. Upon your review of the enclosed, please let me know how I can assist you and your staff in responding to this request.

Sincerely,

ENVIRONMENTAL RESOURCES, INC.

David L. Hardin

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Encl.