



STATE OF DELAWARE
**DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL**
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DOVER, DELAWARE 19901

Office of the
Secretary

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Secretary's Order No. 2011-W-0010

**Re: APPLICATION OF BLADES ECONOMIC DEVELOPMENT CORPORATION
FOR WATER QUALITY CERTIFICATION AND SUBAQUEOUS LANDS ACT
AUTHORITY FOR MAINTENANCE DREDGING IN THE NANTICOKE RIVER
ADJACENT TO THE NANTICOKE RIVER MARINE PARK AT 26 SOUTH
MARKET STREET, BLADES, SUSSEX COUNTY**

**Date of Issuance: February 10, 2011
Effective Date: February 10, 2011**

Under the authority granted the Secretary of the Department of Natural Resources and Environmental Control (Department), the following findings, reasons and conclusions are entered as an Order of the Secretary.

Background

This Order considers Blades Economic Development Corporation's (Applicant) November 4, 2009 application for a federal water quality certification and approval under the Subaqueous Lands Act (SLA)¹ for maintenance dredging in the Nanticoke River to a depth of 7.5 feet below mean low water (MLW) at the entrance to the Nanticoke River Marine Park, which is a 87 slip marina Applicant operates at 26 South. Market Street, Blades, Sussex County.

The Department held a public hearing on November 4, 2010 before the Department's presiding hearing officer, Robert P. Haynes, who prepared a Report of recommendations, dated February 2, 2011 and attached hereto, The Report recommends approval of the SLA permit

¹ The SLA is 7 *Del. C. Chap. 72* and the federal water quality certification authority in Section 401 of the Water Pollution Control Act, or Clean Water Act, the United States Environmental Protection Agency delegated to the Department.

based upon a recommended record developed at the public hearing, as supplemented by the information provided by the Department's experts in the Division of Water, Wetlands and Subaqueous Land Section (WSLS).

Findings and Reasons

I adopt the Report and direct that Applicant be issued the necessary approvals to allow the requested dredging. I find that the record supports issuance of the requested authority, subject to the standard reasonable terms and conditions included in maintenance dredging permits, as developed by the Department's experts in WSLS. This Order will allow Applicant maintenance dredging of the entrance to the marina, which the Department approved.

The marina began operating in 2002 and this is the first maintenance dredging requested. The application seeks to restore the water to the same depth originally approved in order to remove river silt that has accumulated on the bottom over the past 9 years. The testing of the sediment shows no indication that the dredging would release any contaminants into the water, but the Department's permit conditions will require all reasonable precautions to be followed. The dredging will not be allowed during the fish spawning time period and will require notice to the Department in order to provide the opportunity to observe the dredging.

Conclusions

In sum, I direct the following as the final order of the Department:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding under its state and delegated federal authority;
2. The Department provided adequate public notice of the application and the public hearing, and held the public hearing in a manner required by the law and its regulations;
3. The Department considered all timely and relevant public comments in making this determination and has documented a record to support its decision as identified herein and in the Report;

4. The Department shall issue approval for the water certification and dredging based a permit to be issued by the Department's experts in WSLs;
5. The conditions and terms in the permit will protect the environment from any undue harm from the activity in the subaqueous lands and will allow the Applicant to continue to conduct its marina operations in an efficient and safe manner; and
6. The Department shall publish this Order on its web site and provide such notice of it in a manner required by the law and the Department regulations.

s/Collin P. O'Mara
Collin P. O'Mara
Secretary

HEARING OFFICER'S REPORT

TO: The Honorable Collin P. O'Mara
Secretary, Department of Natural Resources and Environmental Control

FROM: Robert P. Haynes, Esquire
Senior Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: APPLICATION OF BLADES ECONOMIC DEVELOPMENT CORPORATION FOR
WATER QUALITY CERTIFICATION AND SUBAQUEOUS LANDS ACT
AUTHORITY FOR MAINTENANCE DREDGING IN THE NANTICOKE RIVER
ADJACENT TO THE NANTICOKE RIVER MARINE PARK AT 26 SOUTH
MARKET STREET, BLADES, SUSSEX COUNTY

DATE: February 2, 2011

I. PROCEDURAL HISTORY AND BACKGROUND

This Report provides the Secretary of the Department of Natural Resources and Environmental Control (Department) with recommendations on Blades Economic Development Corporation's (BEDCO or Applicant) September 3, 2010 application for authority under Subaqueous Lands Act¹ (SLA) and water quality certification under Section 401 of the Clean Water Act.

On September 15, 2010, the Department's Division of Water, Wetlands and Subaqueous Lands Section (WSLS), published public notice of the application to provide the public with the opportunity to comment. In a letter dated September 28, 2010, Thomas Darby provided comments and timely requested a public hearing. The Department granted the request for a public hearing, and on October 13, 2010 published public notice of a November 4, 2010 public hearing. I presided over the public hearing, which was held at the Hardin Hall, 18 West Fourth Street, Blades, Sussex County.

¹ 7 Del. C. Chap. 72.

Applicant seeks permission under the SLA to conduct additional maintenance dredging in public subaqueous lands beneath the Nanticoke River. The request seeks to restore the depth to 7.5 feet below mean low water (MLW) line in an area approximately 240 feet long and between 100 and 120 feet wide. The dredging is the entrance order to allow recreational boats to access Applicant's Nanticoke River Marine Park, which is on land owned by the Department and operated by the Applicant based upon a long-term lease. The Department issued the Marine Park a marina permit for 87 slips for boats, as authorized by Secretary's Order No 99-W-0052 issued October 1, 1999.² The dredging is needed because the water depth is approximately 4.5 feet below MLW. Consequently, Applicant seeks to remove by mechanical clamshell dredging approximately 3,200 cubic yards to restore the water depth to 7.5 feet below MLW. The dredged material is silt, which will be sent to a disposal site in Seaford, Sussex County.

The November 4, 2010 public hearing developed a record from public comments. I determine that the record is sufficiently complete and that it supports this recommended report's recommended approval of the requested SLA authority.

II. SUMMARY OF THE RECOMMENDED RECORD

I recommend that the Department's record contain the following: 1) the verbatim transcript of the November 4, 2010 public hearing; 2) the documents identified and introduced at the hearing, 3) the information the Department requested from the Applicant to address some concerns with the sediment; and 4) this Report.

² This Order and the permit (MP-0010/99) were appealed to Superior Court, which remanded for additional findings on April 11, 2001. The Department issued Supplemental Secretary's Order No. 2001-W-0021 on May 17, 2001, which Superior Court affirmed on September 28, 2001. CA No. 00A-10-001 is 2001.

At the public hearing, the Department's representatives, Laura Herr, Program Manager of WSLs, described WSLs' role in the SLA permit application process. Melanie Tymes, an Environmental Scientist in WSLs, also identified the following relevant documents from WSLs' files as exhibits: Applicant's SLA permit application (DNREC Ex. 1); the public notice of the application (DNREC Ex. 2); the public comments received from the notice (DNREC Ex. 3); the public notice of the public hearing (DNREC Ex. 4); public comments from the public hearing notice (DNREC Ex. 5); photos of the site (DNREC Ex. 6); the memo assigning the presiding hearing officer (DNREC Ex. 7); the memo to the court reporter (DNREC Ex. 8); and the Department's SLA regulations (DNREC Ex. 9).

The Applicant's representative, Roland Downs, the dockmaster for the Marina, Robert Hutton, Applicant's Treasurer, and Applicant's board member, Carlise Windley, were present.

Thomas Darby presented comments that he considered the application was not complete and the importance of keeping the water quality of the Nanticoke River as clean as possible to maintain its status of the Chesapeake Bay's cleanest watershed. Johnny Johnson, a professional engineer with Delmarva Aggregates, spoke in support of the application and indicated that maintenance dredging is necessary like mowing a lawn. Mr. Hutton spoke and indicated that he measured the water level and that they indicated a depth of only 3 feet at MLW, which is insufficient for boats such as his 40 foot boat and that future operation of the marina would be threatened absent maintenance dredging. John King spoke and requested more information on the sediment analysis that was done.

Mr. Windley indicated that the dredging was only to remove silt that had accumulated naturally from when the marina was created 9 years ago and that no "new" dredging below that original depth would occur. Ms. Herr inquired about the depth in the basin and the relative

changes in depth, and Mr. Windley explained that the depth in the basin and the channel to be dredged would be 7.5 feet below MLW, but that the basin's silting was not a concern currently and that the Nanticoke River depth beyond the marina's entrance was 8-12 feet below MLW. The Applicant provided tests results of the sediment and that will be included in the record as DNREC Ex. 10. Don Moore spoke and was concerned with the equipment that would be used and whether a turbidity curtain would be used. Ms. Herr indicated that a turbidity curtain may be required if a permit is issued. Mr. Moore indicated that the dredging would be completed in approximately a month, but that a turbidity curtain may require the removal of the dredged materials by barge versus removal by truck. Mr. Darby indicated he was satisfied with the test results of the sediment.

The WSLs prepared a permit that included conditions that allows hydraulic dredging as the preferred method in that would provide less of an environmental impact, but also allows the requested clamshell hydraulic dredging with suitable controls installed to protect the water quality from excessive turbidity.

III. RECOMMENDED FINDINGS AND DISCUSSION

I recommend that the Department issue the SLA permit for maintenance dredging of the entrance as proposed and the proper disposal of the materials. The Department's experts shall prepare a permit consistent with the recommendation if the Secretary adopts this Report, and I recommend that it include the provisions on prohibiting dredging during the time period when it may harm fish. I note that the person who requested the public hearing indicated his agreement that the testing showed nothing in the sediment to warrant any concern with contaminants polluting the Nanticoke River. I agree that the natural silt does not pose any threat to the

environment and that this was confirmed by the sediment analysis conducted. The WSLs has provided the Applicant with the preferred option of using hydraulic dredging.

IV. RECOMMENDED CONCLUSIONS

Based on the recommended record set forth in this Report, I recommend that the Department approve the following conclusions:

1. The Department has jurisdiction under its statutory authority to make a determination in this proceeding based on the record, which provides adequate reasonable support for approval of the SLA authority;

2. The Department provided adequate public notice of the applications and the public hearing as required by the law and the Department regulations;

3. The Department held a public hearing in a manner required by the law and its regulations and has considered all timely and relevant public comments in making its determination;

4. The Department grants the SLA permit for the dredging and Section 401 water quality certification in a permit to be prepared by WSLs, which shall also be included in this record; and that

5. The Department shall publish this Order on its public web site and provide such other service and notice as required by law and Department regulation or otherwise determines necessary and appropriate.

s/Robert P. Haynes

Robert P. Haynes, Esquire
Senior Hearing Officer