

EXHIBIT E

MANKO | GOLD | KATCHER | FOX LLP

AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

Stephen D. Daly
484-430-2306
Admitted in PA, NY and DE

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January 23, 2024

A LIMITED LIABILITY PARTNERSHIP
FORMED IN PENNSYLVANIA

VIA EMAIL AND U.S. FIRST CLASS MAIL

Commandant (CG-6P)
ATTN: FOIA APPEALS
2703 Martin Luther King Ave STOP 7710
Washington, DC 20593-7710
EFOIA@uscg.mil

Partner responsible:
John F. Gullace (NJ)
Brenda H. Gotanda (HI)

Re: Freedom of Information Act Appeal – Request Number 2023-CGFO-02455

Dear Commandant,

I am writing to appeal the determination under the Freedom of Information Act (“FOIA”) by the United States Coast Guard (“Coast Guard”) in its letter dated November 1, 2023 regarding FOIA Request No. 2023-CGFO-02455 (the “Request”). A copy of the Request and the Coast Guard’s November 1, 2023 letter are attached as **Attachments 1 and 2**, respectively. The November 1, 2023 letter states that the Coast Guard was unable to locate or identify any responsive records to the Request. For the reasons that follow, this determination was in error.

The Request sought documents regarding the Port of Wilmington Edgemoor Expansion in New Castle County, Delaware (the “Project”), including documents concerning the Project’s potential impact on navigation in the Delaware River, and any communications about the Project with either the Delaware Department of Natural Resources (“DNREC”) or the United States Army Corps of Engineers (“Army Corps”). The Coast Guard’s November 1, 2023 letter states that the Coast Guard “conducted a comprehensive search of files within Sector Delaware Bay for records that would be responsive to your request,” but “[u]nfortunately, we were unable to locate or identify any responsive records.”

Under 6 C.F.R. § 5.8, a requester may appeal if they “question[] the adequacy of the component’s search for responsive records, or believes the component either misinterpreted the request or did not address all aspects of the request...” Here, the Coast Guard’s determination that there were no responsive records was erroneous because we are aware of several email communications involving Sector Delaware Bay relating to the Project, and therefore, the Coast Guard does not appear to have adequately searched for responsive records. Specifically, attached hereto are a series of email communications from 2021 between DNREC and the Coast Guard concerning the Project and its impacts to navigation in the Delaware River. In an email from September 2021, LCDR Andrew Cooke stated that “Sector Delaware Bay does not see this



January 23, 2024

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project posing a risk to safe navigation.” **See Attachment 3.** Further, in a decision document prepared by the Army Corps relating to the Project, the Army Corps stated that the Coast Guard had “no objection” to the proposed Project, **see Attachment 4**, suggesting that there may also be communications between the Army Corps and Coast Guard relating to the Project.

Such records should have been identified as part of any adequate search for responsive records. Additional records relating to the Project and/or the Coast Guard’s evaluation of it may exist as well, including any internal Coast Guard communications, other communications with DNREC, or communications with the Army Corps.

We therefore submit the foregoing appeal and request that the Coast Guard revisit its search for responsive records to the Request. Please do not hesitate to reach out to me with any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Daly", written in a cursive style.

Stephen D. Daly

For MANKO, GOLD, KATCHER & FOX, LLP

SDD/acr/11604-1001

Enclosures

cc: Shoshana (Suzanne Ilene) Schiller, Esquire
Jill Hyman Kaplan, Esquire
Brandon P. Matsnev, Esquire

ATTACHMENT 1 – FOIA REQUEST TO USCG

MANKO | GOLD | KATCHER | FOX LLP
AN ENVIRONMENTAL AND ENERGY LAW PRACTICE

Stephen D. Daly
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A LIMITED LIABILITY PARTNERSHIP
FORMED IN PENNSYLVANIA

Partner responsible:
John F. Gullace (NJ)
Brenda H. Gotanda (HI)

September 13, 2023

Via Electronic Mail and Certified Mail

COMMANDANT (CG-6P)
ATTN FOIA OFFICER
US COAST GUARD STOP 7710
2703 MARTIN LUTHER KING JR AVE SE
WASHINGTON DC 20593-7710
EFOIA@uscg.mil

Re: Freedom of Information Act (FOIA) Request

Dear FOIA Officer:

Under FOIA, I am requesting copies of the following records, preferably in electronic form, concerning the proposed Port of Wilmington Edgemoor Expansion located at 4600 Hay Road in the Edgemoor section of New Castle County, Delaware (the "Project") by Diamond State Port Corporation ("DSPC"):

Any documents or written communications (including emails) regarding the Project, including but not limited to the Project's potential impact on navigation on the Delaware River;

Any documents or written communications (including emails) relating to or associated with the Delaware Department of Natural Resources and Environmental Control's consultation with the United States Coast Guard regarding the Project;

Any documents or written communications (including emails) relating to or associated with the United States Army Corps of Engineers' consultation with the United States Coast Guard regarding the Project;

Any written reports, studies, analyses, or evaluations of the Project's design, including its turning basin, and of the Project's and turning basin's potential impacts on navigation on the Delaware River, whether generated by the United States Coast Guard, DSPC, its consultants, the Delaware Department of Natural Resources and Environmental Control, the Army Corps of Engineers, or another party;



COMMANDANT (CG-6P)
September 13, 2023
Page 2

Please supply the records without informing me of the cost if the fees do not exceed \$250, which I agree to pay. Otherwise, please let me know the estimated cost before you fulfill my request. Further, if you deny all or any part of this request, please cite each specific exemption you think justifies your refusal to release the information and notify me of appeal procedures available under the law.

Please do not hesitate to contact me by email at sdaly@mankogold.com or by telephone at (484) 430-2306 if you have any questions or require any additional information to fulfill this request. I look forward to receiving your response within 20 working days of the receipt of this request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Daly', written in a cursive style.

Stephen D. Daly
For MANKO, GOLD, KATCHER & FOX, LLP

ATTACHMENT 2 – 2023 -CGFO-02455 RESPONSE

U.S. Department of
Homeland Security

United States
Coast Guard



Commander
United States Coast Guard
Fifth Coast Guard District

431 Crawford Street
Portsmouth VA 23704
Phone: (757) 398-7355
Email: karen.m.lee@uscg.mil

5720
FOIA 2023-CGFO-02455

01 NOV 2023

Branden Matsnev
Mank Gold Katcher & Fox LLP
Three Bala Plaza East
Suite 700
Bala Cynwyd, Pennsylvania 19004
Email: bmatsnev@mankogold.com

Dear Mr. Branden Matsnev:

This acknowledges receipt of your Freedom of Information Act/Privacy Act (FOIA/PA) request to the U.S. Coast Guard (USCG), dated 9/13/2023, and seeking requesting copies of the proposed Port of Wilmington Edgemoor Expansion located at 4600 HayRoad in the Edgemoor section of New Castle County, Delaware (the "Project") by Diamond State Port Corporation ("DSPC"). Your request was received in this office on 10/11/2023.

This is not a Denial. We conducted a comprehensive search of files within Sector Delaware Bay for records that would be responsive to your request. Unfortunately, we were unable to locate or identify any responsive records.

If you are not satisfied with the response to this request, you have the right to appeal. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter, via email to EFOIA@uscg.mil or by mail to: Commandant (CG-6P), ATTN: FOIA APPEALS, 2703 Martin Luther King Ave STOP 7710, Washington DC, 20593-7710 following the procedures outlined in the DHS regulations at 6 C.F.R. § 5.9. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia.

If you need any further assistance or would like to discuss any aspect of your request, please contact EFOIA@uscg.mil or you may contact our FOIA Public Liaison, Mrs. Amanda Ackerson, at 202-475-3522 in the same manner. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Contacting the FOIA Public Liaison or OGIS does not stop the 90-day appeal clock and is not a substitute for filing an administrative appeal. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Provisions of the FOIA allow us to recover part of the cost of complying with your request. In this instance, because the cost is below the \$14 minimum, there is no charge.

ESUS VOW

Sincerely,



Karen M. Lee
Commander, D5 Deputy Staff Judge Advocate
U.S. Coast Guard

ATTACHMENT 3 – DNREC USCG EMAILS

From: [Cooke, Andrew S LCDR USCG SEC DEL BAY \(USA\)](#)
To: [Mensch, Laura \(DNREC\)](#)
Subject: RE: Coast Guard Regulatory Contact
Date: Friday, September 17, 2021 1:20:12 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)

Ms. Mensch, After review of the documents you have provided Sector Delaware Bay does not see this project posing a risk to safe navigation.

LCDR Andrew Cooke
Sector Delaware Bay
Waterways Management
(215)271-4851 desk

From: Mensch, Laura (DNREC) <laura.mensch@delaware.gov>
Sent: Wednesday, August 18, 2021 8:00 AM
To: Cooke, Andrew S LCDR USCG SEC DEL BAY (USA) <Andrew.S.Cooke@uscg.mil>
Subject: [Non-DoD Source] RE: Coast Guard Regulatory Contact

Hello Lt. Commander Cooke,

Thank you for taking time to talk with me this afternoon. As discussed, attached is a spreadsheet which compiles all the public comments submitted during the public comment period for the Port of Wilmington Edgemoor project. You will be able to search by topic to view the comments that pertain to navigation. Please let me know if you have any issues accessing the public comments through this spreadsheet; if so, I will find another means to share relevant comments.

Thank you again for your assistance – I greatly appreciate it.

Laura Mensch | Regulatory Programs Manager | Principal Planner

Delaware Department of Natural Resources and Environmental Control
Division of Climate, Coastal and Energy | Delaware Coastal Programs
100 W. Water Street, Ste. 7B | Dover, DE 19901 | Office: 302.739.9255
laura.mensch@delaware.gov



DELAWARE DEPARTMENT OF
**NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

📞 302-739-9283 📍 100 W. Water St., Ste. 7B, Dover, DE 19901

From: Creelman, Matthew K CIV USCG D5 (USA) <Matthew.K.Creelman2@uscg.mil>
Sent: Wednesday, August 11, 2021 12:32 PM
To: Min, Jodi J CDR USCG SEC DEL BAY (USA) <Jodi.J.Min@uscg.mil>; Cooke, Andrew S LCDR USCG SEC DEL BAY (USA) <Andrew.S.Cooke@uscg.mil>
Cc: Mensch, Laura (DNREC) <laura.mensch@delaware.gov>; Barnes, Jerry R CIV USCG D5 (USA) <Jerry.R.Barnes@uscg.mil>
Subject: FW: Coast Guard Regulatory Contact

Good Afternoon Sector Delaware Bay,

I believe this is best handled by the Sector.

Thanks,

Matt

Matt Creelman
Marine Information Specialist
Coast Guard District 5
Waterways Management
757-398-6225

From: Mensch, Laura (DNREC) <laura.mensch@delaware.gov>
Sent: Wednesday, August 11, 2021 12:07 PM
To: Creelman, Matthew K CIV USCG D5 (USA) <Matthew.K.Creelman2@uscg.mil>
Cc: Barnes, Jerry R CIV USCG D5 (USA) <Jerry.R.Barnes@uscg.mil>
Subject: [Non-DoD Source] FW: Coast Guard Regulatory Contact

Hello Matt,

I am reaching out to see if you are still available to assist with some questions related to the navigational component of a regulatory review the state is undertaking for the Port of Wilmington Expansion Project. If there is a different individual within USCG that I should reach out to for assistance with this, please let me know. Thank you.

Laura Mensch | Regulatory Programs Manager | Principal Planner

Delaware Department of Natural Resources and Environmental Control
Division of Climate, Coastal and Energy | Delaware Coastal Programs
100 W. Water Street, Ste. 7B | Dover, DE 19901 | Office: 302.739.9255
laura.mensch@delaware.gov



DELAWARE DEPARTMENT OF
**NATURAL RESOURCES AND
ENVIRONMENTAL CONTROL**

302-739-9283 100 W. Water St., Ste. 7B, Dover, DE 19901

From: Mensch, Laura (DNREC) <laura.mensch@delaware.gov>
Sent: Tuesday, April 13, 2021 8:46 AM
To: Creelman, Matthew K CIV <Matthew.K.Creelman2@uscg.mil>; Hassell, Kevin (DEP) <Kevin.Hassell@dep.nj.gov>; Barnes, Jerry R CIV <Jerry.R.Barnes@uscg.mil>
Subject: Re: Coast Guard Regulatory Contact

Thank you for the introduction, Kevin. And I'm very glad to be put in touch with you and meet you, Matt.

I am reviewing a project to construct a new container port on the Delaware River. The consultant submitted a navigational analysis as part of the original application (please see Edgemoor EA Appendix 23 attached). Upon review, we felt that the submission lacked information and analysis addressing emergency procedures. During the public comment period, we received input expressing concerns about potential impacts to navigation (an example letter is attached, which was submitted on behalf of the Port Operators of Greenwich Terminals and Gloucester Terminals). We reached out to the consultant and requested supplemental information and analysis on navigational concerns (please see attached DNREC Mitigation Memo). I am interested in receiving hearing your thoughts on the navigational component of this project, and on whether the attached supplemental information provided by consultants for the Port of Wilmington Edgemoor project addresses navigation concerns associated with the operation of the port.

Thank you for your assistance. I am happy to set up a phone call to discuss further if that would be helpful.

Kind regards,
Laura Mensch

Principal Planner | Regulatory Programs Manager

DNREC Division of Climate, Coastal and Energy | Coastal Programs

100 W. Water Street, Ste. 7B, Dover DE 19904

(302) 739-9255

From: Creelman, Matthew K CIV <Matthew.K.Creelman2@uscg.mil>
Sent: Tuesday, April 13, 2021 6:36 AM
To: Hassell, Kevin (DEP) <Kevin.Hassell@dep.nj.gov>; Barnes, Jerry R CIV <Jerry.R.Barnes@uscg.mil>
Cc: Mensch, Laura (DNREC) <laura.mensch@delaware.gov>
Subject: RE: Coast Guard Regulatory Contact

Thanks Kevin. All is well here. Hope this finds you well.

Laura, it's nice to meet you. I can help you with the questions regarding this project as I'm one of the Coast Guard reviewers for navigation issues in the Mid-Atlantic region and the Program Manager for Private Aids to Navigation.

Thanks
Matt

Matt Creelman
Marine Information Specialist
Coast Guard District 5
Waterways Management
757-398-6225

From: Hassell, Kevin (DEP) <Kevin.Hassell@dep.nj.gov>
Sent: Monday, April 12, 2021 4:37 PM
To: Barnes, Jerry R CIV <Jerry.R.Barnes@uscg.mil>; Creelman, Matthew K CIV <Matthew.K.Creelman2@uscg.mil>
Cc: Mensch, Laura (DNREC) <laura.mensch@delaware.gov>
Subject: [Non-DoD Source] FW: Coast Guard Regulatory Contact

Jerry and Matt,

Hope you are doing well. In an interest of our always taking advantage of our regional coordination, please meet Laura Mensch from Delaware's Coastal Program. Laura had a question on finding USCG contact and I figured the best way would be to ask you guys. Please see below and thanks in advance for your help!

Take care,
Kevin

From: Mensch, Laura (DNREC) <laura.mensch@delaware.gov>
Sent: Monday, April 12, 2021 4:25 PM
To: Hassell, Kevin (DEP) <Kevin.Hassell@dep.nj.gov>
Subject: [EXTERNAL] Coast Guard Regulatory Contact

Hi Kevin,

Thank you for offering to put me in contact with individuals within the Coast Guard that might be able to assist me in finding the correct Regulatory Point of Contact for a project under review in

Delaware.

The project of interest in the construction of a new container port on the Delaware River at Diamond State Port Corporation's Edgemoor property, 4600 Hay Road, Edgemoor, New Castle County, DE 19809. This project will include the construction of an approximately 2,600 foot long, pile-supported wharf structure, dredging of 3.3 million cubic yards of river sediments and underlying soil, excavating the berth and access channel to a depth of -45 feet mean lower low water, and bulkheading 3,200 linear feet of shoreline.

I am seeking input from the Coast Guard on certain aspects of this project that potentially impact navigation on the main river channel. Many thanks, Kevin!

Laura Mensch | Principal Planner | Regulatory Programs Manager

Department of Natural Resources and Environmental Control

Division of Climate, Coastal and Energy | Delaware Coastal Programs

100 West Water Street, Dover DE 19904 | Office: 302.739.9255

ATTACHMENT 4 – ARMY CORPS DECISION DOCUMENT WITH HIGHLIGHT



DEPARTMENT OF THE ARMY
PHILADELPHIA DISTRICT CORPS OF ENGINEERS
WANAMAKER BUILDING, 100 PENN SQUARE EAST
PHILADELPHIA, PENNSYLVANIA 19107-3390

CENAP-ZA

23 June 2022

SUMMARY OF FINDINGS

SUBJECT: Section 408 Determination for the Diamond State Port Corporation – Port of Wilmington Edgemoor Expansion, New Castle County, Delaware (New Castle County Tax Parcel 0615300006).

1. Referenced documents include the following:
 - a. Engineering Circular (EC) 1165-2-220, Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects Pursuant to 33 USC 408.
 - b. United States Army Corps of Engineers (USACE)-Philadelphia District Section 408 Procedural Review Plan, 23 Mar 2022.
 - c. DPM Memo – Strategy for Synchronization of the Regulatory and 408 Programs (dated Aug 2018).
 - d. Duffield Associates, Inc. (now Verdantas, LLC) Section 408 Request, on behalf of the Diamond State Port Corporation (Section 408 Requester) Section 408 Submittal Package.
2. The USACE Project that will be affected by this Section 408 Request is the Delaware River, Philadelphia to the Sea River Federal Navigation Project (Philadelphia to the Sea Project); originally authorized in 1910 (HD 733, 61st Congress, 2nd Session) for the purpose of providing a 96.5 mile channel from Alleghany Avenue in Philadelphia, PA, to deep water in Delaware Bay, six anchorages, construction of dikes and training works for the regulation and control of tidal flow. Review of this Section 408 Request was done pursuant to Engineering Circular 1165-2-220, *Requests to Alter US Army Corps of Engineers Civil Works Projects* 33 USC 408 and followed the procedures set forth in USACE-Philadelphia District's Section 408 Procedural Review Plan (dated 23 Mar 2022).
3. Duffield Associates, Inc. (now Verdantas, LLC) submitted a Section 408 Request on behalf of the Diamond State Port Corporation. The Proposed Project supports development of a new containerized cargo port on the Delaware River shoreline in the Edgemoor section (also referred to the former Chemours Edge Moor Plant) of unincorporated New Castle County, Delaware. An approximately 2,600-foot long pile-supported wharf structure will be constructed along the Delaware River shoreline of the former Chemours Edge Moor Plant. A retaining wall (bulkhead) will be constructed along the landward side of the wharf. The river bottom will be dredged to slope downward from the wall, beneath the wharf, to the shipping

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SUBJECT: Section 408 Determination for the Diamond State Port Corporation – Wilmington Harbor Edgemoor Expansion, New Castle County, Delaware (New Castle County Tax Parcel 0615300006).

berth depth of -45 feet mean lower low water (MLLW), not including advanced maintenance, near the riverward face of the wharf. The -45 MLLW project depth will extend through the ship berthing area (adjacent to the wharf) to the Philadelphia to Sea Federal Navigation Channel. A ship turning basin falls within the boundaries of the Philadelphia to Sea Federal Navigation Channel. The area between the ship berth and the navigation channel will be the harbor access channel.

4. Dredging will create a new access channel from the new ship berth to the Philadelphia to Sea Federal Navigation Channel. The access channel will have a maintained depth of -45 feet mean lower low water (MLLW) datum. The access channel will terminate in a new ship berth that will also be created by dredging. The berth area will have a maintained depth of -45 feet MLLW. Imported granular fill will be placed between the bulkhead and the elevation of mean high water (MHW) landward of the bulkhead.
5. The Proposed Project does not physically alter the dimensions of the Philadelphia to the Sea Federal Navigation Channel, but due to its close proximity a Section 408 Review was warranted. For the purpose of this Section 408 Review, impacts to the operation and maintenance (O&M) of the Philadelphia to the Sea Project were assessed. There were two main topics that required review: (1) possible increased O&M costs due to the increased sedimentation rates caused by construction and subsequent operation of the Proposed Project; (2) possible impacts to navigation caused by use of a portion of the Philadelphia to the Sea Federal Navigation Channel as a ship turning basin.
6. The Section 408 Requester plans to submit a Section 204(f) request for Assistant Secretary of the Army approval of Federal assumption of O&M of the proposed access channel and turning basin. Due to this Section 204(f) request, this Section 408 Request requires Major Subordinate Command (MSC)-North Atlantic Division (NAD) approval.
7. The Section 408 Requester has also submitted a 217(b) request in accordance with the HQUSACE, February 2017 Implementation Guidance (IG) for Section 217(b)/401(c) of the Water Resources Development Act (WRDA) of 1996, and Sections 321 and 356 of the Water Resources Development Act of 2020 to place an estimated 3.03M cubic yards (CY) of non-Federal dredged material into the federally-owned Wilmington Harbor South Dredged Material Placement Facility (DMPF). Section 217(b) of WRDA 1996 authorizes the Secretary of the Army to permit a non-Federal interest to use any DMPF under the jurisdiction of, or managed by, the Secretary, if the Secretary determines that such use will not reduce the availability of the facility for project purposes.

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SUBJECT: Section 408 Determination for the Diamond State Port Corporation – Wilmington Harbor Edgemoor Expansion, New Castle County, Delaware (New Castle County Tax Parcel 0615300006).

8. This Section 408 review does not address the 204(f) or 217(b) requests and has only reviewed possible impacts to the usefulness of the Philadelphia to the Sea Project in accordance with the policy guidance set forth in EC 1165-2-220.
9. As required by EC 1165-2-220, USACE-Philadelphia District considered whether a Safety Assurance Review was required for this Section 408 Request. After evaluation, it was determined that a Safety Assurance Review was not required because the Proposed Project, as presented in this Section 408 Request, does not physically alter the Philadelphia to the Sea Project.
10. After review and evaluation, the USACE-Philadelphia District, does not see a justified reason to deny the Section 408 Request to construct the Proposed Project as presented. Based on the Agency Technical Review, subsequent comment resolution of the documents presented in the Section 408 Request, and the fact that no construction activities occur within the boundaries of the Philadelphia to the Sea Federal Navigation Channel, impacts to future O&M of the Philadelphia to the Sea Project have been deemed to be negligible. Furthermore, it has been determined, in coordination with the “Marine Advisory Committee/Delaware River Pilot’s Association,” that the construction of the Proposed Project will not negatively impact navigation along the Philadelphia to Sea Federal Navigation Channel.

Since the Proposed Project does not physically alter the dimensions of the Philadelphia to the Sea Project, the purpose of this Section 408 review was to determine if the Proposed Project would increase sedimentation rates within the boundaries of the Philadelphia to the Sea Project, thus increasing O&M costs. The Section 408 Requester provided a thorough Hydrodynamic Model that was reviewed by USACE Subject Matter Experts, who determined that the conclusions presented in the model were scientifically sound and that increased sedimentation within the boundaries of the Philadelphia to the Sea Project would not occur. Based on these findings, increased O&M costs are not a concern, and therefore from an engineering standpoint the Proposed Project is not injurious to the public interest and does not impair the usefulness of the Philadelphia to the Sea Project.

It was determined that considering impacts to the Philadelphia to the Sea Project by vessels using a portion of the channel as a turning basin was outside the scope of the Section 408 review. This position is supported by the following language from Appendix G to the Section 408 EC, which provides supplemental information to be used in conjunction with guidance in the main EC for alterations proposed by others to USACE navigation projects:

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SUBJECT: Section 408 Determination for the Diamond State Port Corporation – Wilmington Harbor Edgemoor Expansion, New Castle County, Delaware (New Castle County Tax Parcel 0615300006).

The mission of the USACE navigation program is to provide safe, reliable, efficient, effective, and environmentally sustainable waterborne transportation systems for movement of commerce, national security needs, and recreation. This mission is accomplished by ensuring adequate project dimensions to provide safe passage of commercial navigation through the federally authorized navigation project, while minimizing environmental impacts. Accordingly, any proposed alterations to an authorized USACE navigation project must be evaluated to determine that such alteration will not impair the usefulness of the project and will not be injurious to the public interest.

As noted above, USACE's navigation mission is accomplished by ensuring adequate project dimensions to provide safe passage of commercial navigation through the federally authorized navigation project. As stated, the Proposed Project is adjacent to and does not physically alter the dimensions of the Philadelphia to the Sea Project. The Proposed Project does not impair USACE's ability to O&M the Philadelphia to the Sea Project to its authorized dimensions. As such, considering potential impacts of the Turning Basin on navigation is outside the scope of the Section 408 review. Other ports throughout the USA have turning basins within Federally authorized navigation channels. Even within the Philadelphia to the Sea Project, other ports and terminals use portions of the Federally authorized navigation channel as a turning basin. USACE-Philadelphia District is not responsible for operating/coordinating marine traffic within the Federal Navigation Channel on the Delaware River. The Maritime Advisory Committee (MAC)/Delaware River Pilots Association are responsible for operating/coordinating marine traffic, with the U.S. Coast Guard focusing on any enforcement issues. The Maritime Advisory Committee/Delaware River Pilots' Association (per Enclosure 2), and U.S. Coast Guard have no objection to the proposed project.

Based on the information provided, USACE-Philadelphia District determined that the work, as presented, will not impair the usefulness of the Philadelphia to the Sea Project and is not injurious to the public interest. The information contained in this memorandum includes a summary of findings and provides a rationale for the determination. Engineering Circular 1165-2-220, *Requests to Alter US Army Corps of Engineers Civil Works Projects*, was used as a guideline for the decision-making process.

11. An Agency Technical Review (ATR) was conducted. The Chief of the Geotechnical Section, Mr. Travis T. Fatzinger, P.E. acted as the lead of the ATR panel. The following personnel were assigned to review the request in accordance with their specialties: Mr. Juan

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SUBJECT: Section 408 Determination for the Diamond State Port Corporation – Wilmington Harbor Edgemoor Expansion, New Castle County, Delaware (New Castle County Tax Parcel 0615300006).

Carlos Corona, Ph.D., P.G., Section 408 Coordinator; Ms. Mary Pakan – Civil Section; Mr. Derek Martowska, P.E. – Geotechnical Section; Mr. Eric Orticelle, P.E. – Geotechnical Section; Mr. Robert Hampson, P.E. – H&H Section; Mr. Joseph Gailani, Ph.D., Research Hydraulic Engineer – E.R.D.C. Coastal Process Branch, Coastal and Hydraulics Laboratory; Mr. William (Skip) Harris – Geo Environmental Section; Ms. Barbara Conlin – Planning Environmental and Mr. Daniel J. Kelly, P.E., Project Manager – Operations Division.

12. Agency Technical Review Summary

- a. The submitted design documentation along with supplemental documentation provided in response to the Agency Technical Review comments and questions is sufficient to make a determination for this Section 408 Request.
- b. The Proposed Project associated with this Section 408 Request is not an integral component of the Philadelphia to the Sea Project.
- c. USACE-Philadelphia District will not have increased responsibility or costs as a consequence of approval of this Section 408 Request in relation to the Philadelphia to the Sea Project.
- d. There are no related, ongoing USACE studies and therefore no impacts from this requested action on other USACE projects or studies.
- e. The Proposed Project presented in this Section 408 Request was reviewed by technical members from USACE-Philadelphia District Engineering Branch, Planning Division, and Operations Division, along with members from ERDC's Coastal Process Branch, Coastal and Hydraulics Laboratory, and concluded that the design of the project and scientific modeling presented was done in accordance to standard engineering and scientific practices, and as presented would not affect the function of the Philadelphia to the Sea Project.
- f. Comments presented by USACE during Agency Technical Review were all addressed, incorporated, and resolved by the Section 408 Requester, and are sufficient to make a determination for this Section 408 Request.
- g. The Proposed Project presented in this Section 408 Request will not require any changes to O&M of the Philadelphia to the Sea Project. USACE-Philadelphia District is responsible for maintaining the Federal Navigation Channel to adequate depth and reporting depths to stakeholders. USACE-Philadelphia District does not operate/coordinate the marine traffic within the Federal Channel on the Delaware River. The Maritime Advisory Committee/Delaware River Pilot's Association are responsible for coordinating marine traffic/navigation with the U.S. Coast Guard focusing on enforcement issues.

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SUBJECT: Section 408 Determination for the Diamond State Port Corporation – Wilmington Harbor Edgemoor Expansion, New Castle County, Delaware (New Castle County Tax Parcel 0615300006).

- h. Navigation along the Philadelphia to the Sea Project will not be negatively impacted per coordination with the Marine Advisory Committee/Delaware Rivers Pilot's Association.

13. Environmental Assessment

The project was assessed for National Environmental Policy Act (NEPA) compliance via the Department of Army Standard Permit (CENAP-OP-R-2019-00278-23) pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344) administered by the USACE-Philadelphia District, Regulatory Branch.

14. Real Estate

The work associated with this Section 408 Request does not require a Real Estate action. USACE-Philadelphia District is 100% responsible for maintaining the Philadelphia to the Sea Project to authorized depths and reporting depths to all stakeholders along the USACE Project.

15. Regulatory

A Department of Army Standard Permit (CENAP-OP-R-2019-00278-23) administered by the USACE - Philadelphia District, Regulatory Branch is being issued along with this Section 408 Decision. Regulatory and Section 408 Decisions will be issued at the same time in compliance with the Regulatory-Section 408 synchronization process per DPM Memo – Strategy for Synchronization of the Regulatory and 408 Programs (dated Aug 2018). A joint Regulatory-Section 408 Public Notice was issued. There will be one NEPA document, prepared by USACE-Philadelphia District, Regulatory Branch that will cover both the Regulatory and Section 408 Requirements.

16. Non-Federal Sponsor

The Delaware River, Philadelphia to the Sea River Federal Navigation Project is maintained at 100% Federal expense.

17. Permission

Permission for this project must abide by the conditions set forth in Appendix K of EC 1165-2-220.

CENAP-EC

SUBJECT: Section 408 Determination for the Diamond State Port Corporation – Wilmington Harbor Edgemoor Expansion, New Castle County, Delaware (New Castle County Tax Parcel 0615300006).

18. Conclusion

The USACE-Philadelphia District concludes that the Proposed Project as presented in this Section 408 submittal by Duffield Associates, Inc. (now Verdantas, LLC), on behalf of the Diamond State Port Corporation (Section 408 Requester), will not adversely affect the Philadelphia to the Sea Project at this location. The Proposed Project will not limit the ability of the Philadelphia to the Sea Project to function as authorized and will not compromise or change any authorized project conditions, purposes, or outputs. The Proposed Project as presented in this Section 408 Request is not injurious to the public interest, will not negatively impact the Philadelphia to the Sea Project's authorized purpose, and will not increase any future O&M costs. Should a Department of the Army permit be issued, the Section 408 Requester must abide by all conditions set forth in the USACE Regulatory Permit (CENAP-OP-R-2019-00278-23). The USACE-Philadelphia District does not see any just reason, based on review in accordance with Engineering Circular 1165-2-220, *Requests to Alter US Army Corps of Engineers Civil Works Projects*, why the Section 408 request should not be granted. The conclusion is that permission should be granted to proceed with the Proposed Project.

19. Certification of Legal Sufficiency

There were no legal issues regarding the project.

20. For any questions regarding this evaluation, please contact the Philadelphia District Section 408 Coordinator, Mr. Juan Carlos Corona, Ph.D., P.G. at 215-656-6670.

CENAP-EC

SUBJECT: Section 408 Determination for the Diamond State Port Corporation – Wilmington Harbor Edgemoor Expansion, New Castle County, Delaware (New Castle County Tax Parcel 0615300006).

APPROVAL

RECOMMENDED BY:

Juan Carlos Corona, Ph.D., P.G.
Section 408 Coordinator
Programs and Project Management Division

Travis T. Fatzinger, P.E.
ATR Panel Team Lead
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Operations Division

Barbara F. Moffatt, P.E.
Chief, Engineering Branch

(As to Real Estate sufficiency)
Craig R. Homesley
Civil Projects Support Branch
Real Estate Division-Baltimore District

Peter R. Blum
Chief, Planning Division

Michael A. Landis, P.E.
Chief, Operations Division

(As to legal sufficiency)
Amanda Phily, Esq.
Office of Counsel

CENAP-EC

SUBJECT: Section 408 Determination for the Diamond State Port Corporation – Wilmington Harbor Edgemoor Expansion, New Castle County, Delaware (New Castle County Tax Parcel 0615300006).

ENDORSED BY:

Andrew J. Schwaiger, P.E.
Chief, Engineering & Construction Division

APPROVED BY:

Ramon Brigantti, P.E.
Lieutenant Colonel
Commander, Philadelphia District

4 Encls

1. Duffield Associates, Inc. (now Verdantas, LLC) Section 408 Request Letter on behalf of the Diamond State Port Corporation
2. Delaware River Pilot's Associated Letter – Navigation Study
3. Completion of Agency Technical Review
4. Agency Technical Review Report