



**Before The
State Of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of the Application of Shipyard Partners, LLC, Bay Marine Development, Inc., and Peterson Development, LLC to Dredge the Bed of Sturgeon Bay and Construct a 134 Slip Commercial Marina Consisting of 3 Main Piers on the Bed of Sturgeon Bay, Door County, Wisconsin

Case Nos.: 3-NE-03-15-0918LB &
3-NE-03-15-0919LB

FINDINGS OF FACT, CONCLUSIONS OF LAW AND PERMIT

Bay Marine Development, Inc., 6972 Highway 42-57, Sturgeon Bay, Wisconsin, applied to the Department of Natural Resources for a permit to place a structure on the bed of Green Bay. The purpose of the proposed project as originally noticed was to construct a 134-slip marina using a floating dock structure and floating wave attenuator affixed to the bottom by anchorages and a cable system. There are three proposed main piers extending from the bulkhead line in a southeasterly direction. The southernmost pier would have a proposed length of 690 feet in length, the middle pier would have a length of 680 feet and the northernmost pier would have a length of 380 feet. The proposed project is located on the former Peterson Builders property on Sturgeon Bay. The proposed project is located in NW ¼ of NW ¼, T27N, R26E, Section 6, City of Sturgeon Bay, Door County.

The Department of Natural Resources issued Notice of Proposed Recreational Structure which stated that unless written objection was made within 30 days of publication of the Notice, the Department may issue a decision without a hearing. Timely objections were received. On March 24, 2004, the Department filed a Request for Hearing with the Division of Hearings and Appeals.

Pursuant to due notice hearing was held on May 5-6, 2004, at Sturgeon Bay, Wisconsin before Jeffrey D. Boldt, administrative law judge (the ALJ), presiding. At the outset of the hearing all parties agreed that there were no objections to the proposed dredging relating to this project. Accordingly, the dredging contract case, 3-NE-03-15-0919LB was REMANDED back to the DNR for issuance of the dredging contract. Further, the project proposal as noticed was scaled back as described below in the Findings of Fact, to a project seeking a total 105 marina slips.

In accordance with Wis. Stat. §§ 227.47 and 227.53(1)(c), the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Natural Resources (the Department or the DNR), by

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FINDINGS OF FACT

1. Peterson Development, LLC (Peterson Development), Shipyard Partners, LLC, and Bay Marina Development, Inc. (Bay Marina), 6972 Highway 42-57, Sturgeon Bay, Wisconsin, 54235, completed filing an application with the Department for a permit under Wis. Stat. § 30.12 to place piers for a marina development on the bed of the Sturgeon Bay canal, City of Sturgeon Bay, Door County, Wisconsin. The Department and the co-applicants have fulfilled all procedural requirements of Wis. Stat. §§ 30.02 and 30.12. The co-applicants Peterson Development owns real property located in the NW $\frac{1}{4}$, NW $\frac{1}{2}$ in Section 8, Township 27 North, Range 26 East, Door County. (Ex. 4) The above-described property abuts Sturgeon Bay which is navigable in fact at the project site. The property includes approximately 1900 feet of riparian frontage.
2. The co-applicants propose to construct three large piers in connection with a marina development.

The piers are described in more detail as follows:

Western Dock: An 8'-0" wide wave attenuating dock at the end of the western dock extends 40'-0" perpendicularly on both sides, its width permitting transient dockage on the channel side. Six (6) 4'-0" wide docks extend 40'-0" perpendicularly on both sides of the western dock, and are spaced 35'-0" from face to face.

Middle Dock: An 8'-0" wide wave attenuating dock at the end of the middle dock extends 45'-0" perpendicularly on both sides, its width permitting transient dockage on the channel side. Eleven (11) 4'-0" wide docks extend 45'-0" perpendicularly to the west from the middle dock, and are spaced at 36'-0" from face to face. Thirteen (13) 4'-0" wide docks extend 45'-0" perpendicularly to the east from the middle dock, and are spaced at 36'-0" from face to face.

Eastern Dock: An 8'-0" wide wave attenuating dock at the end of the eastern dock extends 50'-0" to the east, its width permitting transient dockage on the channel side. Fourteen (14) 4'-0" wide docks extend 50'-0" perpendicularly to the west from the eastern dock, and are spaced at 38'-0" from face to face. The east side of the eastern dock also permits transient dockage.

In total, the floating dock system as proposed provides space for approximately 105 slips. Additionally, the proposal involves up to 15 slips on the east side of Dock A and 10 spaces on the inside area behind the bulkhead line, for a total of 25 transient dockage spaces. All docks will be anchored to the lakebed by a

combination of fixed steel pilings and a chain & anchor system. The water depth at the end of the 3 piers is from 16 to 20 feet deep.

The location of the piers is described as follows:

From the northernmost point of the marina, measure 99'-0" southwest along the shore to the edge of the middle dock. The 8'-0" wide middle dock extends 573'-0" south at an angle 56 degrees from the shore. A parallel 8'-0" wide dock, offset 153'-0" west of the middle dock, extends 273'-0" from the shore. A parallel 8'-0" wide dock, offset 170'-0" east from the middle dock, extends 614'-0" from the shore. An 8'-0" wide wave attenuating dock connects the western, middle, and eastern dock by following the existing shoreline.

3. The purpose is to provide a public marina for seasonal mooring of boats on the east side of the Sturgeon Bay canal. The site is a highly developed, quasi-industrial area that was the headquarters for a distinguished local shipbuilding concern that operated until 1996. The site was formerly the Peterson Builders property and regularly moored large ships at the same location. All parties agree that the proposed marina and upland development will substantially improve the existing barren concrete and asphalt lot. Sturgeon Bay City Administrator John Krauss testified that the re-development of the Peterson Builders property is a key component of the City's downtown development plan. The project provides for public access to the water through a new "public waterfront" walking path along the canal. Some type of marina clubhouse center will be built upland of the project site. (Ex. 13) The marina will be open and available to members of the public for seasonal rental of boat slips on a first-come, first-served basis. The proposed marina provides the public benefit of improved access to the canal both by pedestrians accessing the area from the new walking path and by members of the public who rent boat slips at the marina. The property is fenced and locked and there is currently no access to the water from the site.

4. The "historic use" of the property has been as a quasi-industrial area that has regularly occupied large tracts of public waters in the construction of commercial and military ships. Longtime Peterson Builders employee Sandy Orsted testified that it was "very common" for large vessels to be moored in the same location as the proposed piers. (Exs. 6-7) These ships occupied an equivalent amount of public waters over many decades. (Id.) The property is currently fenced and all shipbuilding and related structures have been demolished. (Ex. 8)

5. The area has been regularly dredged to provide a deep navigational channel that supports large commercial shipping vessels of up to 1000 feet in length. The navigational patterns involve regular use by both commercial and recreational vessels as well as seasonal fishing in the canal area. (Ex. 40) The proposed marina docks extend to from 82 feet to 106 feet of the existing shipping channel.

The Citizens for Our Bridge Committee as well as Sturgeon Bay City Administrator Krauss expressed concerns that placement of the marina decks not have a detrimental impact upon any changes to the navigational channel which are necessitated by construction of a new bridge on Maple Street in the City of Sturgeon Bay. For approximately ten years, the City of

Sturgeon Bay has been considering alternatives to the existing Michigan Street bridge. The City is currently very close to resolution of this important and contentious issue. The City is officially planning for a new bridge on the Maple to Oregon Street corridor north of the proposed marina. (Krauss) City Administrator Krauss, while strongly supporting marina development, expressed concern that the piers extended into the U.S. Army Corps of Engineers (USACOE) “dredge corridor” which anticipates some changes in the shipping channel in the likely event that the new bridge is constructed. He provided a rough approximation of the revised dredge corridor based upon the best current information. (Ex. 19) This indicates that all three Docks as presently configured extend into the dredge corridor, with the longest intrusion by Dock C. (Krauss) However, the line as shown on Exhibit 19 is misleading because the piers are configured there as having 115 slips rather than the current proposal of 105 slips. Nonetheless, the piers would still extend very close to or beyond the dredge corridor. Ms. Weber expressed similar concerns on behalf of the Bridge Committee, and voiced concerns about the marina having a negative impact upon bridge construction as a result of an obstruction to navigation for commercial shippers in the area.

The permit as issued balances the needs of commercial shipping with the interests of the marina developers by reducing all three piers by 35 feet. Based upon the testimony at hearing, this should bring the piers outside the likely dredging channel. (See: Ex. 19) However, if this reduction is not sufficient, the permit requires that the docks be shortened to allow for an appropriate margin of safety relating to any revision of the shipping canal necessitated by the new bridge.

6. DNR Engineer Dean Stitgen testified that the marina does not encroach upon the exclusive riparian zone of any neighboring riparians. Stitgen opined that the applicants use of the extended lot line method of apportioning riparian rights was appropriate and more equitable than the co-terminus method, which is used primarily in rounded cove areas. However, using either method, the proposed piers do not violate the area of exclusive use in the riparian zone of neighboring riparians. (Stitgen) All neighboring riparians will still have access to the line of navigation. (Stitgen) Stitgen’s analysis doubled the usual three-foot water depth in determining the exclusive riparian zone to better reflect Sturgeon Bay boating patterns and water depths at the project area. (Ex. 17) The line of navigation was calculated at the six-foot water depth rather than the usual three-foot depth because larger boats are common on Sturgeon Bay. Accordingly, the proposed marina does not interfere with the rights of neighboring riparians to gain access to Sturgeon Bay.

7. The configuration of the marina, and particularly Dock A, is placed very close to the neighboring riparians. (Klimek/Olson/Boes) While Dock A does not encroach into their exclusive riparian zone, given this configuration, some modification is necessary to reduce user conflicts and disturbance of these neighboring riparians. Permit Condition 18 restricts the docking of boats on the east side of Dock A which abuts the neighboring riparians. The applicants’ engineer, David Wendtland, testified that he would recommend a “buffer area” of 100 feet close to shore to make sure that the adjacent riparians can have ingress and egress to the water and to prevent a safety hazard due to user conflicts. Based upon the testimony of neighbors, the permit as issued provides for an additional 100 feet “buffer area,” and also limits these transient moorings to prohibit overnight mooring. Several neighboring riparians were

concerned about noise and other problems associated with overnight parking along this side of Dock A, which is placed very close to the riparian zone of the neighbors. There should be ample spaces available for overnight mooring in the inner open space between Docks B and C behind the bulkhead line.

8. No significant environmental concerns were raised by any party. Rather, the focus of objectors related more to reasonable use and potential impacts on neighboring riparians, and potential impacts on navigation. The DNR Area Water Management Specialist, Michael Hanaway, testified that there would be no expected detrimental impacts to water quality, wetlands, wildlife or the fishery as a result of the marina project. (Ex. 40) Hanaway indicated that the area fish and wildlife managers had no objections to the proposed marina.

9. The neighboring riparians, especially the Boes, expressed reasonable concerns that the huge dock structure would reflect wave energy into their riparian zone that might detrimentally impact their riparian zone. This concern was shared, to a lesser extent, by the co-applicants' own expert. The co-applicants' expert, David Wendtland, is an accomplished and experienced engineer who has designed many marinas in the Door County area. Mr. Wendtland candidly admitted that the design of the marina would benefit from a further analysis of wave energy in the project area. The permit as issued provides a condition requiring such further wave analysis and requires that the co-applicants incorporate this information in preparing final plans and specifications for design of the marina that minimize detrimental impacts from wave action on neighboring riparians. Wendtland was confident that such a design could be engineered and Dean Stitgen, long time DNR engineer, concurred that such a design was practicable and necessary.

10. The Boes expressed concerns that the pier structure will have a detrimental impact on their view of the water from their property. When considering "natural scenic beauty," the DNR typically considers the view from the public waters to the shore. (Hanaway) The project will not have a detrimental impact on the public interest in natural scenic beauty because the shoreline is currently highly developed and industrial in its present form. Further, the views of neighboring riparians are not significantly worse than the view that existed in the historic use of the property as a builder of large commercial and military vessels. (*See*: Ex. 6, et al.) Any detrimental impact of the view of the Boes must be balanced against the significant public benefit that the public marina provides. The impact to the view is not sufficient to warrant denial of the permit. However, the permit as issued further restricts the mooring of boats along the east side of Dock A to no more than six boats and expands the "buffer zone" to 200 feet. This should allow for better sight lines from the adjacent properties out to the waters of the Sturgeon Bay canal.

11. The project will not result in detrimental cumulative impacts to the waters of the Sturgeon Bay canal. (Hanaway) As noted, the site was previously degraded by nearly a century of use as an industrial area for shipbuilding. It is unlikely that there are many similar such sites in the entire State of Wisconsin. Second, as Hanaway testified, the marina project provides a substantial public benefit which offsets the detrimental impacts of occupying such a large area of public waters.

12. The co-applicants are financially capable of constructing, maintaining, monitoring or removing the structures if it should be found in the public interest to do so.

13. The proposed structures will not reduce the effective flood flow capacity of Sturgeon Bay upon compliance with the conditions in the permit.

14. The proposed structures will not adversely affect water quality nor will they increase water pollution in the Sturgeon Bay canal. The structure will not cause environmental pollution as defined in Wis. Stat. §§ 283.01(6m) if the structures are built and maintained in accordance with this permit.

15. The Department has complied with the procedural requirements of Wis. Stat. §§ 1.11 and Wis. Admin. Code Ch. 150 regarding assessment of environmental impact.

SUMMARY OF PERMIT MODIFICATIONS

16. The proposed structures will not materially obstruct existing navigation on Sturgeon Bay and will not be detrimental to the public interest or to the rights of other riparian proprietors upon compliance with the conditions of this permit.

The following permit conditions as proposed by the DNR and as modified below are necessary to meet the standards of Wis. Stat. § 30.12. The proposal and draft permit were modified as follows:

- A) All three docks were reduced in length by 35 feet to allow for a greater margin of safety with respect to both the existing navigational channel and likely new dredge channel in connection with the proposed Maple St. bridge. Further reductions must be undertaken if they become necessary as a result of bridge construction.

The number of seasonally rented slips was reduced by five to a total of 100 as a result of the reduction in pier lengths.

- B) A further study of wave energy shall be undertaken and final plans and specifications acceptable to the DNR must incorporate information from such a study to minimize impacts of wave action on neighboring riparians.
- C) The transient mooring of boats on each side of Dock A was revised to include a 200-foot buffer area where no boats are moored to reduce conflicts with neighboring riparians. Further, the maximum number of boats moored in this area was reduced from 15 to 6. This should improve both the access and view of neighboring riparians. The modified permit prohibits overnight mooring on the east side of Dock A to reduce potential noise complaints by neighboring riparians. All of these changes are necessary to reduce detrimental impacts to neighboring riparians because the Dock A is placed so close to their riparian zones.

- D) The permit as revised makes it clear that the City of Sturgeon Bay can restrict late-night access to the marina and public pathway if it finds it is necessary to protect property or public safety.
- E) The permit restricts the mooring of boats at the end of the three docks to no more than four, and limits such mooring to no more than four hours. Further, no boats are allowed to be moored there at all if such mooring interferes with commercial or other navigation in the shipping channel.
- F) The modified permit requires daily maintenance and clean up of debris in and around the pier structures.

DISCUSSION

The public trust doctrine involves a balancing of the rights of various riparians and of the public. The Public Trust Doctrine has never required that the waters of the state be free from any structures, as several hearing participants suggested. What the Public Trust Doctrine does require is that the waters be held in trust for the public. That has always involved a balancing of the various public and private uses of the water to ensure the rights of both riparians and the public as a whole. This was the focus of the decision in, *State v. Village of Lake Delton*, 93 Wis. 2d 78, 286 N.W.2d 622 (Ct. App. 1979). In *Lake Delton* the Court noted,

In many cases the supreme court has upheld a variety of intrusions into the public waterways, sometimes in the service of commercial interests, even when such intrusions are permanent in nature and destructive of other interests protected by the trust. The test employed in each case has been a balancing test in which the court has weighed the harm done by the intrusion against the benefits conferred allowing it.

The principle established by the *Merwin and Milwaukee* cases is that no single public interest in the use of navigable waters, though afforded the protection of the public trust doctrine, is absolute. Some public uses must yield if other public uses are to exist at all. The uses must be balanced and accommodated on a case by case basis. The principle has been reasserted in many decisions of the supreme court.

93 Wis. 2d at 93-94 and 96.

The proposed project provides several significant public benefits. First, the public marina will provide seasonal mooring to the public on a first-come, first-served basis. Second, the project improves an existing abandoned private industrial site into one which provides public access to the waters of the Sturgeon Bay canal and a direct link to downtown businesses.

The most significant objections were from neighboring riparians concerned with potential wave reflection, intrusion into their riparian zones and concerns about noise and other impacts from living next to a large public marina. The revised permit conditions are meant to balance these concerns with the rights of the marina developer and members of the public using the waters of Sturgeon Bay. It must be noted that the historic use of this property by Peterson Builders also regularly led to large ships being moored very close to these neighbors and their predecessors for nearly 100 years. The shipbuilding business also involved considerable noise and activity. The permit as issued does not restrict the City of Sturgeon Bay from enacting an ordinance that puts reasonable restrictions on public access to the marina area during late-night hours if it finds such restrictions are necessary to protect property or public safety.

Other concerns related to construction of the proposed new Maple Street bridge and possible revisions to the shipping channel as a result of said bridge. The permit reduces the length of the three piers by 35 feet, which should address this issue as well as provide for a greater margin of safety with the existing shipping channel. The current proposal provided for only 82-88 feet between Docks B and C and the existing shipping channel. The applicants' engineer David Wendtland described the navigational safety factor as just "adequate." Reduction of the piers will provide an additional margin for safety. In the event that further reductions are necessary in light of bridge construction, the permit requires such further reduction as are deemed necessary by the DNR Water Management Specialist and Warden. It is assumed that reducing the length of the piers by 35 feet will reduce the number of boats moored by five slips, for a total seasonal rental limit of 100 marina slips.

Additionally, up to six boats can be moored on a transient basis on the east side of Dock A and 10 in the area behind the bulkhead line. Peter Moede testified on behalf of the applicants that the area behind the bulkhead line was suitable for overnight mooring, and it is expected that short-term overnight mooring will be accommodated in this area. The permit also provides that any transient mooring of up to four boats at the end of the three docks be for a period of four hours or less and that such mooring shall be disallowed entirely if it conflicts with commercial or other navigation in the shipping channel.

CONCLUSIONS OF LAW

1. The Division has authority to hear contested cases and issues necessary Orders pursuant to Wis. Stat. §§ 30.12 and 227.43.
2. The co-applicant Peterson Development, LLC is the riparian owner within the meaning of Wis. Stat. § 30.12.
3. The proposed facilities described in the Findings of Fact constitute structures within the meaning of Wis. Stat. § 30.12.
4. The proposed structures will not materially obstruct navigation or reduce the effective flood capacity of the Sturgeon Bay canal and will not be detrimental to the public interest or to the rights of other riparian proprietors if they are constructed pursuant to the permit

conditions set forth in the permit. The project as permitted will meet all pier standards set forth in Wis. Admin. Code NR 326.

5. The project is a type III action under Wis. Admin. Code § NR 150.03(8)(f)4. Type III actions do not require the preparation of a formal environmental impact assessment.

PERMIT

AND THERE HERBY DOES ISSUE AND IS GRANTED to the co-applicants, a permit under Wis. Stat. § 30.12 for the construction of structures as described in the foregoing Findings of Fact, subject, however, to the conditions that:

1. You must notify [Michael Hanaway](#), DNR Water Management Specialist, at phone (920) 755-4942 before starting construction and again not more than 5 days after the project is complete.
2. You must complete the project as described on or before [three years from the issuance date of this permit](#). If you will not complete the project by this date, you must submit a written request for an extension prior to the expiration date of the permit. Your request must identify the requested extension date and the reason for the extension. The Department may grant a permit extension, for good cause. You may not begin or continue construction after the original permit expiration date unless the Department grants a new permit or permit extension in writing.
3. This permit does not authorize any work other than what you specifically describe in your application and plans, and as modified by the conditions of this permit. If you wish to alter the project or permit conditions, you must first obtain written approval of the Department.
4. You are responsible for obtaining any permit or approval that may be required for your project by local zoning ordinances or by the U.S. Army Corps of Engineers before starting your project.
5. Upon reasonable notice, you shall allow access to your project site during reasonable hours to any Department employee who is investigating the project's construction, operation, maintenance or permit compliance.
6. The Department may modify or revoke this permit if the project is not completed according to the terms of the permit, or if the Department determines the activity is detrimental to the public interest.
7. You must post a copy of this permit at a conspicuous location on the project site, visible from the waterway, for at least five days prior to construction, and remaining at least five days after construction. You must also have a copy of

- the permit and approved plan available at the project site at all times until the project is complete.
8. Your acceptance of this permit and efforts to begin work on this project signify that you have read, understood and agreed to follow all conditions of this permit.
 9. You must submit a series of photographs to the Department, within one week of completion of work on the site. The photographs must be taken from different vantage points and depict all work authorized by this permit.
 10. You, your agent, and any involved contractors or consultants may be considered a party to a violation pursuant to Wis. Stat. § 30.292, for any violations of Wisconsin Statutes Chapter 30 or this permit.
 11. Construction shall be accomplished in such a manner as to minimize erosion and siltation into surface waters. Erosion control measures such as silt fence and straw bales must meet or exceed the standards in the Wisconsin Construction Site Best Management Practices Handbook.
 12. To insure that public rights and interests are not impaired by the construction or operation of the Marina, the following conditions must be complied with:
 - a. You must charge no more than a reasonable fee for the slip (or mooring) rentals. Reasonable fees are moorage fees based upon the rates at nearby marinas, after taking into consideration the facilities and services provided.
 - b. The use of the marina shall only be limited by the payment of reasonable fees for the dockage and storage of boats. The use of the marina shall not be conditioned upon membership in a private club or organization, purchase of a parcel of property, purchase of a boat, or other similar factors.
 - c. You must provide adequate upland access including parking for the general public, consistent with the number of slips offered for rental to the general public.
 - d. You must maintain a first come first serve waiting list and advise those individuals on the list of any available slips. This waiting list must be made available to Department personnel upon request.
 - e. You must seasonally advertise the availability of slips in the local paper whenever the waiting list is depleted.
 - f. The Department reserves the right to further restrict the number of moorings or modify or revoke this permit if it finds that the marina slips are not being offered for rental to the public.
 13. The public shall be allowed access to the breakwall and pier areas at any time to fish, as long as they don't interfere with the operation of the marina. This permit shall not restrict the right of the City of Sturgeon Bay to impose reasonable restrictions on late-night access to the area if it decides this is

- necessary to protect property or public safety. The open water area inside the marina remains open to the public and boaters have a legal right to enter for protection from storm events and to fish, etc. They do not have a right to interfere with marina operations or other boats or boaters that may be using the marina.
14. The permittee shall respond to spills of hazardous substances and contaminants by notifying the Department's Spill Coordinator and/or local warden, and follow all of the requirements of Wis. Admin. Code Chapter NR 706. A written plan of operation shall be in place to prevent and mitigate this type of spill/contaminant incident. All employees operating the fuel equipment and sanitary pumpout must be familiar with the plan of operation and requirements for dealing with unforeseen spills of petroleum products or sanitary waste.
 15. You are responsible for the maintenance and upkeep of the permitted project and project site, including cleanup of any debris in or out of the water. This includes daily monitoring of the site for debris in and around the pier structures.
 16. To alleviate traffic congestion and minimize hazards, a sign shall be installed at the entrance to the marina, and inside the marina offices to identify a traffic pattern that boaters should comply with. You shall comply with all requirements of any city boating safety ordinance. This permit does not restrict the placement of marker buoys if done in compliance with approved coast guard standards and local ordinances.
 17. The marina may install navigation lights at the entrance to the harbor area, and other lights as needed for safe navigation purposes. All other lighting on land, in the marina and on the buildings shall be installed with the intent of preserving the natural appearance of the Door County shoreline. This includes minimum sized lighting structures placed close to the ground or pier level, and focusing the direction of the light downward.
 18. No boats shall be moored on the east side of Dock A for the first 200 feet of that structure. This side of Dock A shall be available solely as transient mooring and shall not include overnight mooring except in cases of weather or other emergency. No more than six boats shall be moored at any given time in this area, except under emergency conditions.
 19. The piers shall not exceed the following maximum length: Dock A 579 feet; Dock B 538 feet; and Dock C 238 feet. In the event that there are conflicts with shipping lanes needed for commercial shipping after construction of a Maple/Oregon Corridor Bridge, the docks shall be reduced accordingly as determined by the DNR Area Water Management Specialist and Warden in consultation with the USACOE.

20. No more than 120 boats shall be moored at the marina at any given time, except under weather or other emergency. No more than 100 permanent berths shall be rented seasonally. No more than 10 boats shall be moored in the area behind the bulkhead line between piers A and C. No more than four boats shall be moored at the ends of Doc A, B and C, and such boats shall not be moored for a period of more than four hours. No boats shall be moored at the end of Docks A, B and/or C if such mooring has a material impact upon commercial navigation or protrudes into the shipping channel as currently or subsequently configured.
21. Prior to construction of the marina, the co-applicants shall undertake a wave analysis and present a final design to the DNR that incorporates this information and that minimizes detrimental impacts on neighboring riparians as a result of construction of the marina.
22. This permit and plans must be encased in plastic and legibly displayed along the water's edge during construction and for 30 days after construction of this pier. The purpose of this condition is to allow Department staff and the public to monitor the project and to ensure compliance with the conditions of the project.
23. This permit authorizes future maintenance to the piers; however, no change can be made to the type of materials, number of slips, or pier configuration without written approval from the Department or amendment of this permit.
24. This pier system must not interfere with the rights of other riparians.

Acceptance of this permit shall be deemed acceptance of all conditions herein.

This permit shall not be construed as authority for any work other than that specifically described in the Findings of Fact.

Dated at Madison, Wisconsin on June 3, 2004.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
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By: _____
Jeffrey D. Boldt
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with Wis. Stat. § 227.48, and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to Wis. Stat. § 227.49. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. §§ 227.52 and 227.53, to insure strict compliance with all its requirements.