

BOARD OF PUBLIC WORKS
SECRETARY'S
ACTION AGENDA
October 16, 2024



**NOTE: This Item will be
withdrawn at the
meeting**

Contact: Bill Morgante 410-260-7791
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6. **BOARD OF PUBLIC WORKS**
Wetlands License No. 23-0813

Recommendation: The Board of Public Works Wetlands Administrator recommends that the Board grant a State tidal wetlands license as described for this project involving constructing a pier with timber fenders and a replacement bulkhead.

MDE: The Maryland Department of the Environment recommends granting the license.

- Application received September 8, 2023
- Public hearing held March 25, 2024
- Public comment period ended June 7, 2024
- MDE Report and Recommendation July 25, 2024

Authority: Section 16-202, Environment Article, Annotated Code of Maryland: “*The Board shall decide if issuance of the [tidal wetlands] license is in the best interest of the State, taking into account the varying ecological, economic, developmental, recreational, and aesthetic values [the] application presents.*” See also COMAR 23.02.04.

WORCESTER COUNTY

23-0813 *U.S. WIND INC.* – To replace and rebuild an existing pier and bulkhead proposed to be part of US Wind’s Operation and Maintenance (O&M) Facility by constructing a pier with timber fenders and constructing a steel bulkhead.

Ocean City, Sinepuxent Bay

Special Conditions: Listed Below

Application: US Wind Inc. seeks a State tidal wetlands license to construct a 353 foot long by 30 foot wide concrete pier with associated timber fenders and to construct 383 linear feet of replacement steel bulkhead as part of a proposed US Wind’s Operation and Maintenance (O&M) Facility on the Sinepuxent Bay in Worcester County.

Report & Recommendation: MDE held a public hearing and received public comments. MDE’s Report and Recommendation (R&R) to the Board recommended the license be granted.



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Public Comment to the Board: Since opposition was expressed at the March 25th MDE hearing, the Wetlands Administration solicited comments from 179 interested persons who attended the hearing, and posted MDE's R&R on the Board's website. Wetlands Administration received 869 responses against the project, most in the form of five one-page form letters. Specifically, 835 commenters submitted form letters, and 34 commentors supplied comments other than the form letters. Six comments in favor were received. Opposition comments included:

- The project will create crowding in the West Ocean City Harbor. Industrialization will add large ships and increase air and water pollution.
- The project is a threat to marine heritage of the area. It will lead to a decline in real estate values, tourism, wildlife, and the tax base while increasing noise.
- The project's resultant industrialization will lead to more noise, traffic, safety issues, and reduced water and air quality. The local marine heritage will be jeopardized. Commercial interests will win out over residents.
- Replacing the two fish houses will impact or destroy commercial fishing and local consumers. In 2019, \$7,000,000 was generated in the West Ocean City Harbor.
- The project will have huge negative impact to sport fishing, affecting revenues, tourism, and local businesses. Industrialization will negatively affect sport fishing, causing increased shoaling pollution, and safety concerns.

Wetlands Administrator's Review: The Wetlands Administrator visited the site, reviewed MDE's R&R, as well as the many comments submitted. Additionally, the Wetlands Administrator discussed the project with DNR, commercial fishermen, interested persons, the U.S. Fish and Wildlife Service, and the applicant.

The applicable legal standard from COMAR 23.02.04.09 states the Board shall "take into account (a) *The varying ecological, economic, developmental, recreational, and aesthetic values that the project presents; and (b) The State's public policy to preserve the wetlands and prevent their despoliation and destruction.* After reviewing comments, applying the appropriate legal standards, and considering the previously-stated five values, the Wetlands Administrator determined that this project's evaluation, for license issuance recommendation purposes, should be limited only to the impacts of the proposed filling work in the affected wetlands. Specifically, the Board's evaluation of the license is confined to the impacts of the proposed bulkhead replacement and pier construction in the wetlands. The proposed licensed activity is consistent with past licensed work in State tidal wetlands. The Board has licensed numerous similar pier and bulkhead projects over the past five years. The pending application does not propose any unique impacts to the State's tidal wetlands relative to other previously approved projects. Additionally, in reviewing public comments submitted directly to the Board, all opposed to the project cited reasons not related to the impact of the bulkhead replacement and pier construction on the State's tidal wetlands.

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Wetlands Administrator's Review (cont'd):

Furthermore, relevant to the economics of commercial fishing in Ocean City, while not connected to the wetlands license activity, are current discussions being spearheaded by the Department of Natural Resources (DNR) to establish a Memorandum of Understanding with US Wind Inc. by early 2025 to provide for several forms of fisheries compensatory mitigation should this project move forward. U.S. Wind Inc. recently signed a Letter of Intent with DNR addressing this approach for fisheries compensation for the benefit of commercial and for-hire recreational (charter) fishermen.

Conclusion: Based on the record herein, MDE and the Wetlands Administrator concurs that the Board should grant the license. The Wetlands Administrator recommends the following proposed special conditions for this project:

Proposed Special Conditions:

1. The Licensee shall remove an existing pier and associated structures prior to the commencement of the construction of a new pier.
2. The Licensee shall deploy a turbidity curtain around the entire area of demolition to contain any fine materials that may be generated during the process of demolition prior to the commencement of work.
3. The Licensee shall submit a Stormwater Pollution Prevention Plan (SWPPP) for the proposed Operations and Maintenance facility to the Water and Science Administration, Tidal Wetlands Division, for review and approval prior to the commencement of operations at the facility.
4. The Licensee shall submit a General Discharge Permit application to the Water and Science Administration, Industrial Discharge Permits Division for review and approval, as determined necessary, prior to the commencement of work at the facility. The Licensee shall send confirmation to the MDE, Tidal Wetlands Division.
5. The Licensee shall complete the construction of the bulkhead prior to filling behind the bulkhead. The bulkhead shall be designed and constructed to prevent the loss of fill material to waters of the State of Maryland. Only clean fill, which is free of organic, toxic, contaminated, or deleterious materials, shall be used.
6. The Licensee shall perform all works in accordance with the required Soil Erosion and Sediment Control Plan as approved by the County Soil Conservation District for the County in which the works are performed.
7. The Licensee shall assure that there is no discharge of sanitary wastewater from any boat or vessel moored, berthed, or docked at this mooring or docking facility, except as prescribed by federal or State regulations.
8. The Licensee shall assure that the storage and handling of petroleum products shall be in strict accordance with the Oil Pollution Regulations of the Maryland Department of the Environment. The Licensee shall employ measures to prevent and control spills of fuels or lubricants from entering the waters of this State.

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Proposed Special Conditions (cont'd):

9. The Licensee shall assure that all boat maintenance at the pier shall be restricted to those activities that can be performed without materials entering the waterway.
10. The Licensee shall assure that trash and garbage containers will be conveniently located, and the facility owner/operator shall be responsible for adequate disposal of collected materials. Such waste shall not be discharged to the waterway.
11. The Licensee shall not perform any in water work from May 15th through July 15th of any year due to horseshoe crab spawning.
12. To minimize acoustic impacts on marine life the Licensee should use best management practices such as using vibratory hammers for some or all of the pile placement and construction phasing to minimize acoustic impacts, using a “soft start” or “ramping up” pile driving (e.g., driving does not begin at 100% energy), driving piles as deep as possible with a vibratory hammer prior to using an impact hammer, and using cushion blocks when using an impact hammer.
13. Under COMAR 23.02.04.04, the performance of project work under this license is contingent upon the licensee receiving all other State and local approvals and permits.

BOARD OF PUBLIC WORKS		THIS ITEM WAS:	
APPROVED	DISAPPROVED	DEFERRED	WITHDRAWN
WITH DISCUSSION		WITHOUT DISCUSSION	