

HEARING OFFICER'S REPORT

TO: The Honorable Gregory Patterson
Cabinet Secretary, Department of Natural Resources and
Environmental Control

FROM: Theresa Smith, Public Hearing Officer
Department of Natural Resources and Environmental Control

RE: Reconsideration the of Coastal Construction Permit
Application Denial, pursuant to Section 6.2 of the
*Regulations Governing Beach Protection and the Use of
Beaches* (7 DE Admin. Code 5102)

DATE: June 16, 2026

I. BACKGROUND AND PROCEDURAL HISTORY:

Pursuant to Section 6.2 of the *Regulations Governing Beach Protection and the Use of Beaches* (7 DE Admin. Code 5102) ("Regulation") a virtual administrative public hearing was held on Monday, April 06, 2026, at 10:00 a.m., via the State of Delaware Department of Natural Resources and Environmental Control ("DNREC," "Department")'s State of Delaware Zoom Platform, to receive testimony from David Heffernan ("Applicant," "Appellant") and to build the hearing record ("Record") for the Secretary's reconsideration of the decision to deny the Coastal Construction Permit application ("Application") that was filed on behalf of the property owner, Barbara Curtis¹. The Application was for a Concrete Structure that measures 118 feet in length by 10 feet in width, with a 10-degree slope and

¹ Department's Exhibit 2K – *POA Barbara Curtis.pdf* includes a Power of Attorney, dated January 22, 2026, authorizing David Heffernan to act on behalf of Barbara Curtis in this hearing matter.

6" thickness, extending over the dune, and installed seaward of the DNREC Building Line ("Concrete Structure") located at Lot 2, Clifton Shores, Sussex County, Delaware, Tax Parcel No. 230-17.00-241.00 ("Property").

On August 18, 2025, the Department issued violation notices (Department's Exhibits 2A and 2B), to the property owners that were incumbent of unpermitted concrete beach access structure that was located between two parcels. In accordance with Sections 2.2.1, 4.5.3, 4.5.3.1.1, and 4.6.1 of the Regulation a permit is required to be obtained from the Department's Division of Watershed Stewardship prior to installation of any structure on any Delaware beach seaward of the Building Line as defined in the Regulation. The violation notice advised the property owners that the concrete beach access structure installed seaward of the DNREC Building Line was constructed without the required permit from the Division of Watershed Stewardship, furthermore, the slab-on-grade concrete material is not permitted due to its susceptibility to erosion, breakage, and potentiality to become waterborne storm debris.

Subsequent to the violation notices, the Department identified the responsible owner of the Concrete Structure, and issued an additional violation notice (Department's Exhibit 2C), with the following compliance options: (1) the removal and dune restoration by November 15, 2025, (2) to submit a permit application or letter of approval application, or (3) file an appeal of the violation notice.

On November 14, 2025, the Department received an after-the-fact application for a Coastal Construction Permit (Department's Exhibit 2D) for the existing Concrete Structure that, as indicated in the Application, serves as a dune crossover structure and a boat ramp. In the application the Applicant provided a letter explaining that the intent of the existing Concrete Structure is to transport small recreational watercraft and related beach equipment, while also allowing access for emergency response personnel to launch their equipment. As standard protocol the Application was evaluated, and a public notice was issued by the Department advising the public of the proposed Application to offer the opportunity for the public to comment on the same.

On January 16, 2026, the Department issued a decision to deny (Department's Exhibits 2E and 2F) the after-the-fact Application for the Concrete Structure, formally serving notice upon the Applicant. The Division of Watershed Stewardship determined that the proposed Application does not meet the following Regulations in order to issue a Beach Access Structure permit for a dune crossover and boat ramp:

(1) In accordance with Section 4.5.3 of the Regulation:

"[B]efore any person commences the construction for [] a beach access structure, or any portion thereof, that would be located seaward of the Building Line, said person must have been issued a letter of approval for the construction by the Division. A person may receive said letter of approval after applying to the Division on an application form that shall be made available by the Division. The Division shall process said application

form pursuant to the procedures set forth in the provisions of subsection 4.8 of the Regulations.”

(2) In accordance with Section 3.1.1.4 of the Regulation:

“a building, patio, deck, swimming pool, carport, driveway or similar type of structure shall not be considered by the Division as being the type of structure that must be located seaward of the Building Line on a parcel of land in order to achieve the intended purpose of the structure. The Division may require that these latter types of structures, or portions thereof, be constructed landward of the Building Line, or not constructed at all.”

(3) In accordance with 5.3.1.2 of the Regulation:

“The effect of the proposed construction on shoreline recession, beach erosion, flooding, and potential damage to the parcel of real property that is the subject of the permit application, and potential damage to any other parcel of real property, public lands, or personal property;”

(4) In accordance with 5.3.1.6 of the Regulation:

“Any other factors or information that the Division determines to be relevant to the subject matter of the permit and carrying out the purposes and intent of the Regulations and the Act.”

Specifically, respective to the above, the Division found that : (1) the Applicant constructed a beach access structure seaward of the Building Line without first obtaining the required letter of approval from the Division; (2) the structure functions as a driveway rather than a permissible boat ramp

because it does not extend from land into the waterline of the Delaware Bay (3) the use of concrete material is not permissible for a dune crossover due to the risk of erosion causing the concrete to break apart and become waterborne storm debris; and (4) the increased vehicular activity over the dune associated with launching watercraft would likely adversely affect wildlife, including protected species such as the red knot and horseshoe crab.

The Department also received numerous written comments in response to the public notice issued regarding the proposed Application. While all comments were duly considered, many expressed oppositions to approve of the Application. However, it should be noted that the comments did not identify additional measures beyond those already required under applicable statutory and regulatory provisions for determining whether the Application requirements have been satisfied.

As the Department has the authority and responsibility to consider and mitigate such environmental impacts in carrying out the purposes of the *Regulations and the Beach Preservation Act* (7 Del.C. Ch. 68) the Department instructed the Applicant to remove the Concrete Structure within fifteen (15) days of receipt of the notice dated January 16, 2026 and to restore the dune by grading the sand back to the contours that it had prior to constructing the Concrete Structure in alignment with the surrounding dune and plant with Cape American Beach Grass (*Ammophila breviligulata*).

On February 7, 2026, pursuant to Section 6.2 of the Regulations, the Applicant submitted a written request for the Department to hold a public hearing, for the Secretary to reconsider the Division of Watershed Stewardship's decision to deny the Application (Department's Exhibit 2F). Accordingly, the public hearing for this matter was scheduled to be held on April 06, 2026.

The Appellant was formally notified of the scheduling of the administrative public hearing by written correspondence sent by this Hearing Officer via certified mail and electronic mail on January 16, 2026. The Public notice of this hearing was published in both the *Delaware State News* and the *News Journal*, DNREC Events Webpage, and the *State of Delaware Public Meeting Calendar*. It should be noted that the Department's public notice included translation into Haitian Creole. Proper notice of the hearing was provided as required by law.

This Hearing Officer's Report ("Report") provides a thorough review of the Record generated in this matter and offers recommendations to aid the Secretary in his final decision regarding this reconsideration matter. A copy of the court reporter's transcript from Veritext Legal Solutions (Department's Exhibit 3), which documents the Exhibits entered into the Record and the Appellant's and Witnesses' testimony offered for the Secretary's review, is expressly incorporated herein.

The Department held the administrative public hearing in this matter, pursuant to 7 DE Admin. Code 5102, and all other relevant statutory

authority, on April 06, 2026. The Department staff, members of the public, Mr. David Heffernan, and four witnesses were in attendance, as well as Devera Scott, Esq., Deputy Attorney General, and Jennifer Pongrantz, the responsible staff of the Division of Watershed Stewardship, who both appeared on behalf of the Department.

Following opening remarks from this Hearing Officer at the administrative hearing on April 06, 2026, Mr. Heffernan offered his testimony to build the Record in this matter. Mr. Heffernan provided a brief background of the property and the structure that existed prior to building the Concrete Structure. He explained that the property was previously owned by his late father who built a wooden structure and was unsure if a permit was issued for that structure. He explained that the previous wooden structure of similar size and configuration had existed at the property for approximately twelve years. He testified that he replaced the wooden structure with concrete because the wood was deteriorating and was unsustainable. Further, the wider Concrete Structure was to encourage people to remain on the designated crossing area, and to allow easier access for beachgoers with handicaps, as well as using it to launch watercrafts. He also testified he completed the construction without knowledge of needing a permit.

In addition, Mr. Heffernan's testimony then focused on public safety and emergency access. He testified that Pinewood Beach lacks fire hydrants and described information provided to him by local fire officials regarding the need for "hard suction" access to the bay during firefighting

operations. According to Mr. Heffernan, emergency responders could use the Concrete Structure to drive the equipment closer to the shoreline in order to draft water from the bay during a fire emergency. According to his testimony, emergency access across the dune could save valuable time during rescues involving kayakers, sail boaters, or other individuals in distress on the water. Mr. Heffernan referenced specific incidents that, in his view, demonstrated the importance of rapid beach access for emergency response teams.

Regarding environmental concerns cited by the Division, Mr. Heffernan disputed statements that the structure adversely impacted wildlife such as red knots and horseshoe crabs. He testified that he does not operate heavy boat traffic over the dune and primarily transports jet skis only a few times per summer. He further argued that municipal dune maintenance operations using bulldozers and skid steers likely create more disturbance to wildlife than his private structure.

Mr. Heffernan also addressed the public comments received by the Department. He asserted that comments submitted to DNREC did not accurately reflect broader public opinion and referenced supportive comments posted online following local news coverage of the matter, as attached in Appellant's Exhibit 2. He testified that many community members supported the structure because of its utility, accessibility, and safety benefits.

Additionally, Mr. Heffernan testified that the wider structure has benefited elderly individuals and persons with mobility limitations. He explained that transporting items such as jet skis, wheelchairs, and mobility devices over narrow or deteriorating wooden walkways was difficult and that the Concrete Structure provided improved accessibility and stability for emergency responders and to tow watercrafts.

Finally, Mr. Heffernan proposed alternative options for the Department's consideration in the event the Concrete Structure itself was deemed acceptable. His testimony reflected an overview of the following options detailed in the letter dated February 7, 2026 (Department's Exhibit 2G):

1. An environmentally safe government-grade use coating could be applied to the Concrete Structure as it currently exists to prevent erosion.
2. Conditions of the permit for the Concrete Structure as it currently exist, include periodic inspection for structural integrity and dune impact, immediate repair or removal if any adverse effects are identified, and ongoing maintenance obligations be clearly identified.
3. To remove the concrete surface over the dune and replace it with a wood or composite ramp with the same width, preserving emergency access while avoiding precedent for additional dune crossovers.

4. To remove the Concrete Structure as it currently exists, and to install a wood or composite consistent with the current dimensions.

Subsequent to Mr. Heffernan's testimony he called upon four witnesses. At that time, they were sworn in prior to giving their testimony for the Record.

Mr. and Mrs. Okolo testified that they are Mr. Heffernan's neighbor and shared the cost of constructing the Concrete Structure because both properties benefit from its use. Mrs. Kendra Okolo stated that the structure has not caused observable damage to the dune, vegetation, or surrounding environment during the time it has existed. Mrs. Okolo expressed her opinion that existing dune crossover regulations may be outdated and not reflective of current beach usage patterns, accessibility needs, or property conditions. She emphasized that the structure improved beach access for individuals with disabilities and mobility impairments, including members of her family, and she supported allowing the structure to remain subject to monitoring or other conditions.

Mr. Sylvester Okolo testified that the structure provides value to the community, particularly for emergency response and firefighting access in a neighborhood without fire hydrants. He supported Mr. Heffernan's position that the structure could improve public safety and emergency response times. Mr. Okolo also testified that the structure could assist elderly and disabled individuals in accessing the beach and referenced a prior incident where an elderly person fell while navigating the beach area before the

Concrete Structure existed.

Mr. Kenneth Day, a resident of the community, testified that he frequently walks past the structure and believes it blends naturally into the dune landscape. He stated that the structure appeared stable, well-constructed, and unlikely to cause additional environmental harm. Mr. Day expressed support for allowing the structure to remain in place rather than requiring its removal, which he believed could weaken the dune area. He also noted the positive contributions Mr. Heffernan and neighboring residents make to the community through maintenance and upkeep efforts.

Lastly, Mrs. Diana McCarson testified on her experience as a renter of the property during the summer with her family over the past years. She stated that the concrete access structure improved beach accessibility for her elderly parents, who have mobility issues. Mrs. McCarson also described a prior kayaking incident in which she became stranded in a current and emergency responders were called to assist her. At that time the previous wooden structure was in place. She testified that while she didn't feel like she was in imminent danger, and the first responders were faced with having to transport equipment across an area that didn't have a structure to access the beach area. She further testified that it was her belief that the Concrete Structure could assist the emergency responders in transporting personnel and equipment across the beach more efficiently during emergencies.

Following the public hearing, the hearing record remained open for seven (7) days, through April 13, 2026. Pursuant to Mr. Heffernan's testimony, he provided additional documentation to this Hearing Officer via email, which was immediately incorporated into the Record being generated in this matter on April 9, 2026 (Appellant's Exhibits 1-3). As previously mentioned, the Appellant's Exhibits supported testimony regarding public comments made in support of the Concrete Structure. In addition, he submitted visuals from Google Earth of Broadkill Beach and Primehook Beach to support his opinion *"...95% of all the beach homes don't have a walkway and just walk on sand directly and over the dunes directly. According to DNREC causing great harm to the surrounding ecosystem and wildlife. My structure has no negative impact on the dune."*

In addition, because the property identified above falls within the mapped Delaware Ecological Network, the Department's Division of Fish and Wildlife submitted a statement on April 7, 2026, attached herein as Appendix "A". The Division of Fish and Wildlife recommend that any project work required, as a part of the final decision, not occur between April 15 to August 30. This restriction is intended to avoid disruption of red knot migration activities from April 15 through June 7 and horseshoe crab spawning activities from April 15 through August 30.

Also, at the request of this Hearing Officer, the responsible staff of the Division of Watershed Stewardship submitted clarification for the benefit of Record by providing an email dated, May 8, 2026, which is attached herein as Appendix "B".

SUMMARY OF THE PUBLIC HEARING RECORD:

The Record consists of the following documents:

Appellant Exhibit:

Exhibit 1-Email dated April 9, 2026, David Heffernan_Statement

Exhibit 2-Email dated April 9, 2026, David Heffernan regarding attachments

Attachment to Exhibit 2_Video recording of Facebook post and comments from *WBOC TV 16 Delmarva's News Leader*(.mov)

Exhibit 3-Email dated April 9, 2026, David Heffernan regarding attachments

Attachment to Exhibit 3_Google Earth Broadkill Beach (.mov)

Attachment to Exhibit 3_Google Earth Primehook (.mov)

Department's Exhibits

Exhibit 1 – Legal Notices Issued for the Administrative Hearing

1A - Affidavit of Publication - Delaware State News

1B - Affidavit of Publication - Wilmington News Journal

1C - Certified Mail Receipt to David Heffernan

1D - Confirmation of Attendance from David Heffernan

1E - DNREC Events Webpage (English)

1F - DNREC Events Webpage (Haitian Creole)

1G - State of Delaware Public Meeting Calendar Notice

Exhibit 2 – Administrative File Documents Compiled Prior to Hearing

2A - August 18, 2025, Letter regarding the Violation Notice to Lot 1 & Lot 2

2B - September 11, 2025, Letter regarding the Violation Notice to David Heffernan

2C - October 29, 2025, Letter regarding updated Violation Notice to Barbara Curtis via USPS and Certified Mail

2D - November 14, 2025, Application submitted by David Heffernan for Concrete Dune Crossing

2E - January 16, 2026, Permit Denial via Electronic Correspondence

2F - January 16, 2026, Permit Denial via Certified Mail

2G - February 7, 2026, Appeal of Permit Denial submitted by David Heffernan

2H - February 7, 2026, Priority Mail Package regarding
Permit Appeal
2I - Power of Attorney for Barbara Curtis
2J - Photograph of Concrete over the dune
2K - Photograph view of Concrete and beach
2L - Photograph view of Concrete towards property
2M - Photograph of Boat
2N - Video Recording of Emergency Response Services
entering on concrete area
2O - Video Recording of Emergency Response Services
exiting from concrete area
2P - Public Comments Received Regarding Application
Exhibit 3 – Official Verbatim Hearing Transcript

During the course of this proceeding, the Department received comments from members of the public expressing opinions regarding the proposed Application however, the purpose of the proceeding was not to evaluate the Application as originally proposed, but rather to provide the Appellant with an opportunity to seek the Secretary's reconsideration of decision to deny the Application. Accordingly, the burden rests with the Appellant to present sufficient facts and evidence in support of the appeal and to demonstrate why the Division's basis for denial should be reconsidered by the Secretary. The Record considered herein is therefore limited to the testimony, exhibits, and other materials submitted in connection with this administrative hearing.

II. RECOMMENDED FINDINGS AND CONCLUSIONS:

Currently pending before the Department is the Appellant's request for reconsideration of the decision to deny the Application, as referenced above. This reconsideration is being made pursuant to Section 6.0 of 7 DE

Admin. Code 5102, and all other relevant statutory authority. I find that the Respondent's request, as well as the Department's holding of the April 06, 2026, administrative public hearing, is consistent with the statutory provisions authorizing the Department to make such reconsideration, and that proper notice regarding this matter was provided as requested by law. The testimony offered by the Appellant and the witnesses at the public hearing, along with the exhibits and other documentation incorporated into the Record by this Hearing Officer, as specifically identified herein, constitute the Record generated in this matter.

I find that in accordance with the 7 *Del.C.* Ch. 68 and 7 DE Admin. Code 5102, the Department is responsible for protecting and preserving public and private beaches of the State through a permit process or a letter of approval process for any new, modification, or expansion construction that align with those provisions. As such, the Regulations shall apply to projects, permits and letters of approval that are authorized or issued after the effective date of the Regulations, to which the most recent amendment to the Regulation was effective as of August 11, 2016. To that, I find that the Appellant submitted a Costal Construction Application for a boat ramp and dune crossover on November 14, 2025. The testimony of the Appellant identified that the Concrete Structure of this matter was built approximately a year and a half prior to submitting the Application and in accordance with the Regulations, the Division of Watershed Stewardship reviewed the proposed Application as an after-the-fact permit application.

In addition, I find that the Division of Watershed Stewardship also evaluated the Application as a driveway and dune crossover, in alignment with the Regulation, contrary to the proposed use as a boat ramp and dune crossover because the structure does not extend from land into the waterline of the Delaware Bay to be considered a boat ramp. In accordance with Section 3.1.1.4 of the Regulation, driveways are not a type of structure that can be located seaward of the Building Line on a parcel of land in order to achieve the intended purpose of the structure.

Further, I find that the Concrete Structure of this matter measures approximately 118 feet in length and 10 feet in width. Pursuant to Section 4.5.3.1.1, which provides that "[c]rossovers serving one or two single-family residences shall not be wider than four feet," substantially exceeding the maximum width permitted by the regulation.

In support of the structure's dimensions, the Appellant and the witness testified that the structure provides a benefit to visitors requiring special accommodations, including wheelchair access. Section 4.5.3.1.4 of the Regulation authorizes the Department to grant variances from crossover size requirements for persons with special needs on a case-by-case basis. However, I find that the Application does not identify the structure as being intended for handicap access for the personal use of the property owner. Rather, as reflected in both the testimony presented at the hearing and the letter submitted with the Application, the asserted need for handicap accessibility pertains to visitors who may use the structure. Accordingly, I find that the Application does not establish that the structure

was proposed as a special-needs crossover warranting consideration under Section 4.5.3.1.4.

Further the Appellant's testimony provided that the wider Concrete Structure provides access for emergency response to drive their equipment to the beach. While acknowledging that emergency access may serve an important public safety function, I find that 7 DE Admin. Code 5102 does not contain any provisions recognizing emergency access as a basis for authorizing, exempting, or varying the requirements applicable to dune crossovers or similar structures.

In review of the alternative options proposed by the Appellant, I find that the options do not align with, nor are they supported by, the provisions of 7 DE Admin. Code 5102. Specifically, the Regulations do not provide a basis for approving the Concrete Structure based upon: (1) the application of an environmentally safe, government-grade coating to the existing Concrete Structure to reduce erosion; (2) the imposition of permit conditions requiring periodic inspections for structural integrity and dune impacts, immediate repair or removal if adverse effects are identified, and ongoing maintenance obligations; (3) the removal of the concrete surface and replacement with a wood or composite ramp of the same width to preserve purported emergency access; or (4) the removal of the existing Concrete Structure and installation of a wood or composite structure consistent with the current dimensions. Accordingly, I find that these alternatives do not remedy the structure's noncompliance with the applicable requirements of the Regulations.

Lastly, I find that any project work required as a result of the final decision, include a time of the year restriction between April 15 to August 30, and is necessary to avoid disrupting red knot migration activities and horseshoe crab spawning activities.

In conclusion of reviewing the Record generated in this matter, I recommend the Secretary adopt the following recommendations regarding this reconsideration matter:

1. The Department has jurisdiction, as provided for under 7 *Del.C.* Ch. 68 and 7 DE Admin. Code 5102, and all other relevant statutory authority, to make a final determination on the aforementioned pending reconsideration matter, after holding the administrative public hearing on April 06, 2026, and reviewing the Record generated in this matter;

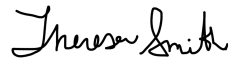
2. The Department has carefully considered the factors required to be weighed in issuing a final decision in this reconsideration matter, and finds that the Record supports the same;

3. The Department has reviewed the Record for the reasons stated above, and consistent with the applicable provisions of 7 DE Admin. Code 5102 and 7 *Del.C.* Ch. 68, I find no factual or legal basis upon which to reconsider or modify the Department's decision to deny the Application. Therefore, I recommend that the Secretary adopt this Report in its entirety, and affirm the Department's denial of the Application, as the record supports the same;

4. Furthermore, the Record supports the Department's instruction for the Applicant to take the additional actions as set forth in the October 29, 2025, correspondence. This Report recommends that the Division of Watershed Stewardship determine an updated timeline as to when such actions be completed by the Applicant, and such actions shall include a time of the year restriction between April 15 to August 30 to avoid disrupting red knot migration activities and horseshoe crab spawning activities, and provide the Appellant with such information within 30 days of the final order;

5. The Department has an adequate Record for its decision, and no further public hearing is appropriate or necessary; and

6. The Department shall serve and publish its Order on its internet site.



Theresa Smith
Public Hearing Officer

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Attachments:

Appendix A: DFW.Statement(04/07/2026)

Appendix B: DWS.Statement(05/08/2026)