

DATE: 7/9/2020

TO: Department of Natural Resources & Environmental Control
Wetlands & Subaqueous Lands Section
89 Kings Highway
Dover, DE 19901

FROM: Steven Ross

SUBJECT: Comments on PROJECT NOTICE posted June 24, 2020 - Pending Application for Subaqueous Land Lease Application for James Russell Bruner (1-34-23.12-16.00).

I am Steven Ross, Trustee of the Steve Ross Living Trust which owns the property on 1307 N Schultz. This property is adjacent to the 1306 N Schulz, the property of the subject Subaqueous Land Lease Application.

The notice states the following:

“To construct a 4 by 13-foot pier but only a 4 by 10-foot section will be channelward of the mean high water line, a 6 by 45 foot “L” dock and to install a boat lift with four (4) associated pilings and an elevator lift on two (2) associated pilings abutting the dock in the Little Assawoman Bay at 1306 N. Schulz Road, Fenwick Island, Sussex County, DE.”

I have also received a copy of the full application which includes the plans showing the pier running north, starting 10 feet west of the eastern property line extending 10 feet into the bay past the mean high-water line. At the end of the pier, the dock extends another 6 feet north into the bay and 45 feet to the west, running parallel to the existing seawall on 1307 N Schultz. Furthermore, the first boat lift extends the structure another 12 feet into the bay and a second lift extends 8 feet. In total, the structure will extend 28 feet into the bay north of Old Inlet Point.

I appreciate the time Matthew Jones of DNREC has put to considering my first round of comments and his attempt to work with Mr. Bruner to alter his design to address my initial comments. Now that I see the new design, I would like to add these comments:

- The plans place the pier at the exact location where two channels converge and boats frequently travel at high speeds (see Exhibit A). One channel, which is marked, goes from the northeastern side of Fenwick and diagonals west southwest directly toward the proposed pier, serves residents on the east side of Fenwick. The second channel, which is not marked, parallels the sea wall along Old Inlet Point and serves residents living on the east side of N. Schultz Road as they first travel north and then round the point and head west. The second channel also leads boats directly toward the planned pier. All other water north to where Seal Island is submerged is very shallow, forcing boats to use these two channels. Additionally, boats often travel at high speeds so they

can plane above the shallow water nearby. The resulting structure causes the following issues:

- It is a safety hazard to slow-moving, non-motorized, kayakers, stand up boarders, sailboaters, and others who might be unseen and unheard by faster-moving watercraft due to the blind spot created by this pier, dock, and pair of boat lifts.
- It is a safety hazard to boats themselves that have no alternative other than traveling at high speed close to this proposed structure.
- The twin boat lifts will subject Mr. Bruner's moored boat to frequent waves caused by the wakes of high-speed boats.
- The plans place the structure directly off land that FEMA has designated as a VE flood zone – a coastal area with a 1% or greater chance of flooding and an additional hazard associated with storm waves. This means that during storms, the strongest wave action will fall upon the pier. The worst storms approach from the North and North East.
 - This will place the boat and structure at a higher risk of storm damage.
- All other docks on N. Schultz on both the west and east side of Old Inlet point, are parallel to north/south bulkhead (see Exhibit B). This avoids interfering with the high traffic east/west corridor to the north. Additionally, none of the docks on the north end of N. Schulz Road have a 4-piling boat lift. As I understand it, these were prohibited due to the same safety and navigational issues I have noted above.
 - This proposed dock would be the only one flowing North.

Given the above issues with the plan, I strongly recommend both a public hearing and a further minimization of the plans. I recommend the following change to address the concerns.

- Move the dock and pier to the west side of the property where boat traffic and speed is much reduced.
- Shorten the dock to 30 feet, which is comparable to the dock size of the neighboring properties.
- Remove both of the two 4-piling boat lifts which increase the navigational hazards and replace them with a single, 2-piling lift similar to the ones installed at neighboring properties.
- End the dock, rather than start the dock, at the location of the old bulkhead pilings, reducing the waterway intrusion by 6 more feet.

Making these changes will do the following:

- Move the structure so it is further away from a channel where boats frequently travel fast;
- Reduce the impact of storms on the structure and boats;
- Eliminate the blind spot created for boats traveling at high-speed on the channel, thus reducing the likelihood of a collision with slow-moving, non-motorized, kayakers, stand up boarders, sail boaters, and others.
- Make the structure consistent with similar structures on both the east and west sides of N. Shultz Road.
- Reduce the waterway intrusion by 6 more feet.

I would also like to comment on the letter from Matthew Jones to the town of Fenwick, found here: <https://fenwickisland.delaware.gov/2020/06/26/proposed-pier-and-dock-at-1306-schulz-road/>.

In that letter, Mr. Jones states:

“On June 1, 2020, and June 3, 2020, I conducted a site visit by boat with a colleague and marked the channel markers with survey-grade GPS (within 30 cm accuracy). Additionally, we took depth measurements at Mean Low Water (MLW) & Mean High Water (MHW) that were also marked using survey-grade GPS equipment. Lastly, we ran a tape from the capboard of the retaining wall out to the following distances and deployed a mooring ball: a) 30’, b) 37’, and c) 46’. Each one of those mooring balls was also marked using survey-grade GPS equipment. DNREC-WLSL captured this data because it allows us to accurately depict where the channel markers are located, setbacks from the channel, depths of the channel and to require minimization (channelward encroachment) of the proposed structure. “

DNREC needs to make public the information gathered by depicting all of the measurements on a map. Once that is done, the public comment period should be extended for 20 days after that has been distributed to all parties who requested the plans.

His letter also states:

“After speaking with Mr. Bruner and the contractor/consultant, DNREC suggested that the pier start at the retaining wall (landward of the Mean High Water Line-MHWL) and extend channelward to the toe of the rip-rap which is approximately 13 feet but only 10/11 feet are channelward of the MHWL and within DNREC-WLSL jurisdiction. This would place the end of the pier at approximately the same distance out as the adjacent neighbor’s bulkhead. From there the dock would extend along the toe of the rip-rap bringing it in closer to land and farther away from the navigation channel. The channelward encroachment of the structure would be reduced by approximately 20 feet thus reducing any impacts to navigation.”

There are several inaccurate statements above.

- The new plans do NOT reduce the channelward encroachment by 20 feet. In, the original design, the pier extended 16 feet past the existing bulkhead. In the new design, that segment is removed. That represents a 16-foot reduction in encroachment. If some other calculation was made, please show it on the map requested in the previous point.
- The above statement does not take into account the unmarked channel which runs parallel with the existing bulkhead, which both the former and new design completely block.

His letter also states:

“Please note that the following reconfiguration is being proposed and will be re-advertised beginning on June 24, 2020.

- *A 4-foot wide by 13-foot long pier of which only a 4-foot wide by 10-foot long section is channelward of the MHWL. The pier ends at the toe of the existing rip-rap/old wall or approximately in line with the adjacent neighbor's bulkhead.*
- *A 6 wide by 45-foot long dock which will run parallel to the existing rip-rap revetment.*
- *Two boat lifts (the farthest is 12 feet out, the other at approximately 8 feet). "*

The statement is incorrect because the plans do NOT show the dock running parallel to the existing rip-rap. The distance between the rip-rap and the dock increases as you head west. To be parallel with the existing rip-rap, it should also run parallel to the new retaining wall on Mr. Bruner's property, such that it slopes slightly toward the southwest (See Exhibit C). If DNREC decides to allow the dock on the north side, they should require the dock to run parallel with the retaining wall will reduce the intrusion into the waterway on the west side by several feet. Additionally, this plan is not a minimization in that the original plan called for a 35-foot long dock with one boat lift, and this plan now calls for a 45-foot long dock and 2 boat lifts.

Finally, I'd also like to note that the diagram included with the application is NOT drawn to scale and thus may be misleading and there is no notice on the diagram that it is not to scale. The document states that the pier will extend 13 feet, but the length of the pier as measured on the diagram is shorter than the distance from the eastern end of the dock and the western edge of the adjacent property which is listed as 10 feet. In addition, the diagram does not reflect the location of the second two pilings of the second 4-post boat lift. An accurate diagram would help the public comment on this application. As such, **I request that a new diagram be provided to all who requested it and the comment period be extended to 20 days AFTER the revised diagram is distributed to all parties who received the incorrect/misleading one.**

Thank you for considering my comments and I am looking forward to seeing a revised plan that addresses my concerns.

If a revised plan is not offered, I am formally requesting a public hearing. I would also like a sound reason why the dock and pier cannot be moved to the safer west side. If it is due to areas of shallow water caused by the negligence of the owner (or a prior owner), the owner should be responsible for addressing the situation. When the lot was originally subdivided, there was a deep channel along the west side of the original bulkhead. The owner chose not to maintain the bulkhead, failing to abide by the Town of Fenwick Code "81-1 Erosion control structure required" found here <https://ecode360.com/8868475>.

As a result, he allowed the sand and soil from his property to fill parts of the channel. When the owner finally complied, the location of the rip-rap of the property, was the matter of a lawsuit since more than 75% of the lot had eroded below the mean high water line. The results of the suit allowed him to place the rip-rap in its present location instead of the existing mean high water line, but not at the original lot boundaries where the original owner had requested. That settlement should not then allow a future owner to build a large pier and dock to essentially reclaim the land lost. Additionally, the owner should not be able to place the pier and dock in a less safe location on the north side, just because of the original owner's failure to follow the town code.

In summary, I still believe the current size and placement of the dock, pier, and boat lifts are a serious safety hazard to both boaters and other recreational users of the bay. I appreciate the desire to safely and conveniently house a boat at 1306 N Schulz Rd., however, I don't believe that waterway concessions should be made for more than one boat lift or to compensate for the small lot by having a large dock. If the owner wishes to have a boatlift, it should be located at on the west side of the property where it is less intrusive to the channel and consistent in placement and size to other nearby property.

I can be reached at 301-651-3848 or coolgen10@gmail.com. Any further communication by mail should be sent to the mailing address below (not the property address, as I do not receive mail at that address).

Steve Ross, Trustee of the Steve Ross Living Trust

Property Address:

1307 N Schultz Rd
Fenwick Is, DE 19944

Mailing Address

6901 Carlynn Ct
Bethesda, MD 20817

Exhibit A – Dangerous Flow of Boat Traffic Near Proposed Peer, Yellow lines represent boat traffic; Green and Red markers are the channel markers.

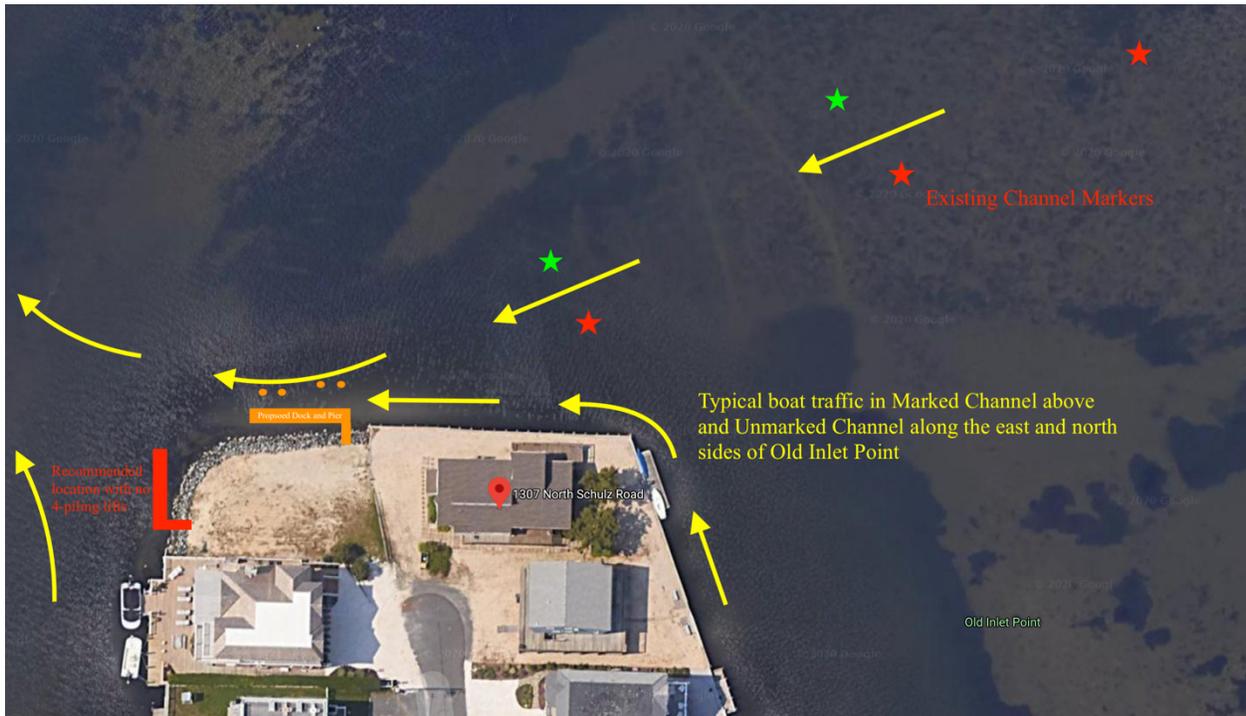
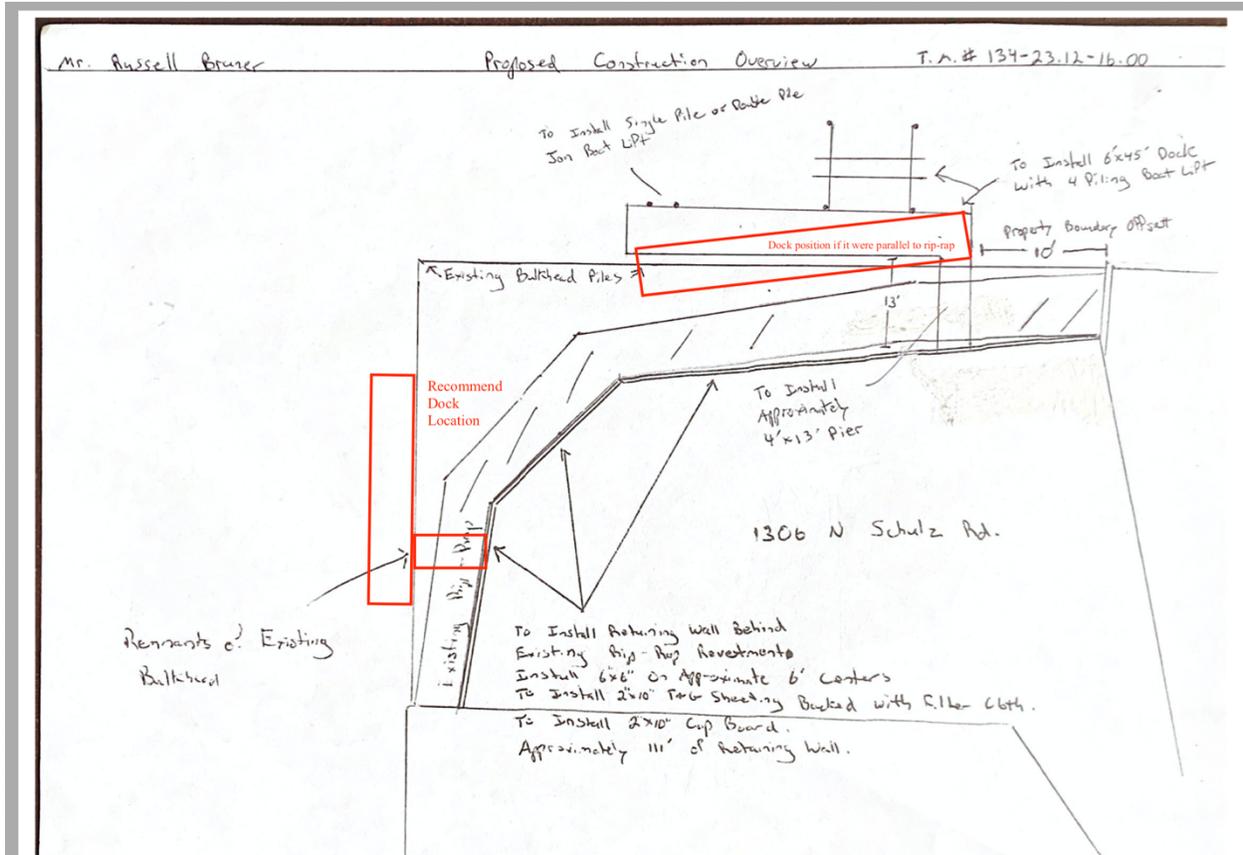


Exhibit B – Arial view of Old Inlet Point – Note that no docks or piers extend north and all property has closely set docks or small piers to next to the channel that runs along the east and west sides of the point. None of the first 10 northern properties have a 4-piling lift.



Exhibit C – Proposed position of pier and dock on the west side of the property that minimizes safety issues. Also, see how the current plan fails to place the dock parallel with the existing rip-rap as stated by Mr. Jones.





The Town of Fenwick Island

800 Coastal Highway, Fenwick Island, DE 19944-4409
302-539-3011 ~ 302-539-1305 fax
www.fenwickisland.delaware.gov

June 30, 2020

DNREC Secretary Shawn M. Garvin
87 Kings Highway
Dover, DE 19901

RE: Proposed Pier and Doc at 1306 N Shultz Road, Fenwick

Dear Secretary Garvin:

On behalf of The Town Council of Fenwick Island and the property owners of Fenwick Island, I am respectfully requesting a public hearing be granted for this project for the following reasons:

- Steve Ross, the adjacent property owner at 1307 N. Schultz Road, Fenwick Island requested a public hearing due to concerns regarding the proximity to the channel in Little Assawoman Bay.
- We met with Matt Jones of DNREC, Jordan Winterling of JWL Services, on May 27, 2020 at the 1306 N Shultz Road location due to concerns of local neighbors.
- Since that time, we have continued to hear concerns as neighbors learn of the project.
- Town Council voted to request a hearing at their June 26, 2020, Council meeting.

We recognize that the owner and contractor have worked to reduce the encroachment into the waterway, however this is a very tight area and neighbors continue to express concern. We believe that those concerns can best be addressed through the public hearing platform.

It is our hope that we can work in partnership with DNREC, James Bruner the owner of the property and the surrounding neighbors to resolve these issues so that all boaters can be as safe as possible. We believe that a public hearing would result in open dialogue and a better project for all concerned.

Sincerely,

Town of Fenwick Island
Teresa A. Tieman
Town Manager

Cc: Town Council

Fwd: Public Comment 1306 N . Schultz Subaqueous Land Lease Application -James Russell Bruner(1-34-23-12-16.00)

Janice Bortner <jbandlb@hotmail.com>

Tue 10/20/2020 11:07 AM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Cc: dnrehearingcomments@delawe.gov <dnrehearingcomments@delawe.gov>

Sent from my iPhone

Begin forwarded message:

From: Janice Bortner <jbandlb@hotmail.com>

Date: October 20, 2020 at 10:56:07 AM EDT

To: janice Bortner <jbandlb@hotmail.com>, Larry Bortner <lbortner@bortnerbros.com>

Subject: Fwd: Public Comment 1306 N . Schultz Subaqueous Land Lease Application -James Russell Bruner(1-34-23-12-16.00)

Sent from my iPhone

Begin forwarded message:

From: Janice Bortner <jbandlb@hotmail.com>

Date: October 18, 2020 at 10:01:30 AM EDT

To: "mathew.jones@delaware.gov" <mathew.jones@delaware.gov>

Subject: Fwd: Public Comment 1306 N . Schultz Subaqueous Land Lease Application -James Russell Bruner(1-34-23-12-16.00)

Sent from my iPhone

Begin forwarded message:

From: Janice Bortner <jbandlb@hotmail.com>

Date: October 16, 2020 at 2:05:46 PM EDT

To: "mathew.jones@delaware.gov"

<mathew.jones@delaware.gov>

Subject: Public Comment 1306 N . Schultz Subaqueous Land Lease Application -James Russell Bruner(1-34-23-12-16.00)

Matt,

Thank You , for hearing our concerns on the proposed Docks for the Bruner Property. I know you have heard from many Citizens who use that waterway to boat and do other recreational activities

.
I am opposed to the dock on the North
End of the peninsula .

As a Mother and Grandmother who's Family frequently use the waterway that this structure will block causing lack of visibility to on coming boat traffic , I would like to know who will be accountable when someone is hurt or killed due to the structure Mr Bruner is proposing and your Agency is considering to approve .

Please put me on the list for speaking at the hearing November 5th I

I appreciate your time
Best Regards,
Janice Bortner
1303 North Schulz Rd
Fenwick Island

Sent from my iPhone

Proposed Pier and Doc at 1306 N Schultz

Brandon.Bortner@lw.com <Brandon.Bortner@lw.com>

Mon 6/8/2020 5:53 PM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Matthew,

My name is Brandon Bortner and we own a house at 1303 N Schulz. I write to object to the proposed pier at 1306 N. Schulz, which, in its current form, is completely inappropriate both from a scale and location perspective.

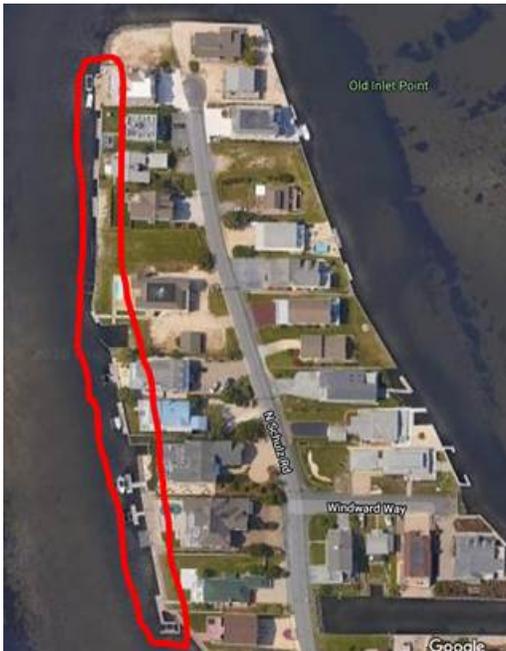
As I am sure you are aware, the boating channel is quite narrow between the tip of N. Schulz Rd peninsula and what was once Seal Island. This channel also starts and ends quite close to the shoreline of the N. Schulz Rd peninsula, with the remainder of the open water between the end of the peninsula and Seal Island being way too shallow for an outboard powered V-hull boat. In other words, in approximate terms, the only navigable water between the N. Schulz Rd peninsula and Seal Island is located 10 – 40 ft from the shoreline of the N. Schulz peninsula with the remainder of the open water between the peninsula and Seal Island being unnavigable. Below is a rough depiction with the channels marked in red.



Accordingly, the pier and dock that is currently proposed at 1306 N Schultz will be directly in the way of the channel and will cause massive disruption.

Additionally, the scale that is being proposed is way out of line with precedent docks on the N. Schulz Rd peninsula. On both sides the N. Schulz Rd peninsula, the docks are tight to the properties in order to respect the boating channels, which run tight to the peninsula's shoreline. Nobody on the N. Schulz Rd peninsula has a dock that extends beyond the seawall for good reason – it would be disruptive to the boating channels. The new owners at 1306 N Schultz were well aware of the boating channels when they bought the property and the proposed pier and dock are not reasonable (or necessary) in light of the boating channel and applicable neighboring dock precedent. Rather the currently proposed pier and dock at 1306 N Schultz merely reflects an attempt by the owners to extend the reach of their relatively small property, which cannot be allowed.

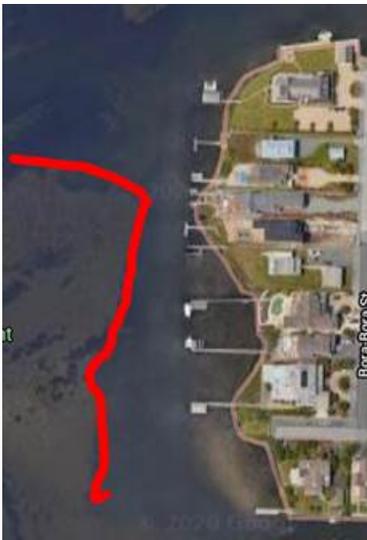
The bottom line is that the owners of 1306 N Schultz should construct and place their dock consistent with their neighbors of the west side of the peninsula, *i.e.*, on the western shoreline of their property, which is consistent with every other home on the western side of the peninsula (as you can see below).



I understand that the owner of 1306 N Schultz may have pointed to the docks of the homes on Bora-Bora St. as consistent with the proposed design. The Bora-Bora St. docks are bad precedent for two reasons.

First, Bora-Bora St. isn't N. Schultz and the proposed design is inconsistent with what the neighboring properties (believe me, any one of us would have selfishly liked to install a massive dock and pier, why not).

Second, the boating channel adjacent to the Bora-Bora St. docks is much wider and affords boaters the ability to comfortably pass the docks within the boating channel (the red line in the image below indicates the edge of navigable water). Furthermore, unlike the proposed plans at 1306 N. Schulz, the docks on Bora-Bora St. do not extent into navigable water as is proposed at 1306 N Schulz, but rather border it. So the docks on Bora Bora St. have piers by necessity, rather than convenient design and are wholly inapplicable to a dock proposal at 1306 N. Schulz.



I hope you consider my position in the reviewing the application and I look forward to speaking at the public hearing to the extent the owner of 1306 N Schulz refuses to conform the proposed dock both in terms of location (to the western shoreline of the peninsula) and scale (attaching to, but not extending beyond the western shoreline, i.e., a dock, but no pier).

I am happy to discuss the contents of this email further.

Best,

Brandon

Brandon J. Bortner

LATHAM & WATKINS LLP

555 Eleventh Street, NW

Suite 1000

Washington, D.C. 20004-1304

Direct Dial: +1.202.637.2117

Fax: +1.202.637.2201

Email: brandon.bortner@lw.com

Bio: [Attorney Profile](#)

<http://www.lw.com>

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, disclosure, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies including any attachments.

Latham & Watkins LLP or any of its affiliates may monitor electronic communications sent or received by our networks in order to protect our business and verify compliance with our policies and relevant legal requirements. Any personal information contained or referred to within this electronic communication will be processed in accordance with the firm's privacy notices and Global Privacy Standards available at www.lw.com.

Public Comment: 1306 N. Schultz - Subaqueous Land Lease Application; James Russell Bruner (1-34-23.12-16.00)

Brandon.Bortner@lw.com <Brandon.Bortner@lw.com>

Thu 7/9/2020 2:16 PM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Matt,

First off, I wanted to commend your work. You have really done your diligence on this project in a way that is quite impressive.

As we discussed previously, as a boater myself, I'm not one to flatly object to Mr. Bruner having a dock for his boat no matter the design. My primary concern is sufficient space between his dock and the boating channel. I also believe that, consistent with the neighbors, any pier/dock should be minimal to accomplish the objective at hand – to safely house a reasonable boat for the area. In other words, the dock should serve as a means to reasonably house a boat and should not be an extension of the property itself at the expense of waterway access to the surrounding community.

In considering the reasonable length of a pier/dock out into the waterway in this case, I also consider the space it will take the captain to position the boat onto the boat lift. Said differently, will the captain need to take up space in the channel in order to approach the boat lift when docking and, if so, does this approach unreasonably extent into the channel? These questions are very relevant to the case at hand because boaters approaching the northern tip of the N. Schultz Rd. peninsula from the east side waterway must turn the corner of the peninsula going westward nearly blindly and, because of the depth of the water, boats must assume a plane quickly. My expectation is that given water depth, a larger boat will be docked with the bow facing westward and, as a result, will be docked initially with an eastward approach and circling back to point the bow towards the west on the lift, which takes up meaningful space in a heavily traveled channel. If somehow the larger boat is docked with bow facing eastward, exiting the boat slip will position the vessel in the immediate path of other vessels quickly turning to point of the peninsula heading westward, All of this, together with my additional comments below, cause concern about positioning the pier/dock on the north side of the property in any respect.



If my understanding is correct, the plans show the pier running north, starting 10 feet west of the eastern property line extending 10 feet into the bay past the mean high-water line. At the end of the pier, the dock extends another 6 feet north into the bay and 45 feet to the west, running parallel to the existing seawall on 1307 N Schultz. Additionally, the first boat lift extends the structure another 12 feet into the bay and a second lift extends 8 feet. In total, the structure will extend 28 feet into the bay north of Old Inlet Point.

My initial reaction to these dimensions and plans, assuming they are accurate, are as follows:

- 1) I appreciate the desire to safely and conveniently house a boat at 1306 N Schulz Rd., however, I don't believe that waterway concessions should be made by neighbors for more than one boat lift at 1306 N. Schulz. If a boatlift located at the northwest corner or west side of the property is less intrusive to the channel, then that is where a single boatlift

should be located. Houses on N. Schulz and the surrounding roads are single family homes, not marinas, and best I can tell, no other house has multiple boat lifts. Accordingly, if Mr. Bruner wants to dock multiple boats at his property, this should be accomplished on the west side of the property – completely out of the way of the boating channel.

2) In terms of minimizing the proposed structure, I'm not sure why the dock needs to start, rather than end, at the existing bulkhead poles. It appears that the MHW and MLW is 5' and 4', respectively, at the existing bulkhead poles, which is more than sufficient. Accordingly, the existing plans appear to extent the structure 6' further into the Old Inlet Point waterway than necessary. It is also not clear to me why the larger lift is towards the east side of the dock rather than the west as the west would seem farther from the boating channel.

3) Lastly, constructing the pier and dock on the west side of the property would ultimately seem most logical. This placement would completely remove the structure from the heavily traveled boating channel, consistent with all of his neighbors on the west side of N. Schulz Rd., while at the same time offering Mr. Bruner the same space to house his boats.

I would also note that 1307 N. Schultz was purchased understanding the lot dimensions and assuming the limitations resulting from the prior erosion. Presumably these limitations were built into the sale price of the property. Just as in determining limitations posed by the floor area ratio (FAR) rules in terms of allowable building size in the Town of Fenwick Island, lot limitations should be taken into account in determining what is permissible for pier/dock rights. In other words, the Town of Fenwick Island is applying the total current area of the lot in determining the total amount of usable floor area that the home at 1307 N. Schultz will be permitted to have as opposed to the lot area 1307 N. Schulz had many years ago. Permissible pier/dock rights should be similarly circumscribed.

Matt, regardless of the ultimate outcome of the pier/dock at 1307 N. Schulz, I wanted to again reiterate that I very much appreciate your hard work on this project. You have really gone above and beyond, not only with respect to your diligence efforts, but also with your open and honest public engagement.

Best,

Brandon Bortner
1303 N. Schulz Rd.

This email may contain material that is confidential, privileged and/or attorney work product for the sole use of the intended recipient. Any review, disclosure, reliance or distribution by others or forwarding without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies including any attachments.

Latham & Watkins LLP or any of its affiliates may monitor electronic communications sent or received by our networks in order to protect our business and verify compliance with our policies and relevant legal requirements. Any personal information contained or referred to within this electronic communication will be processed in accordance with the firm's privacy notices and Global Privacy Standards available at www.lw.com.

Proposed Dock and Boat Lifts at 1306 N. Schulz Street, Fenwick Island . Delaware

R Carmean <drwcarmean@verizon.net>

Mon 7/13/2020 4:56 PM

To: Brown, Tyler (DNREC) <Tyler.Brown@delaware.gov>; Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Dear Mr. Brown and Mr. Jones: I would like to express my concerns regarding the plans to construct docks and multiple boatlifts at the above referenced property: These plans would create a large dock that will project into a very busy section of the Assawoman Bay, causing a potentially dangerous situation for other boaters trying to access/depart the bay from this section of the Town.

For decades long before this property and other developed lots along this street were created, this water area has been a popular recreational site for vacationers and residents. While we can appreciate that the current owner has already made some changes to his plans, it appears that boaters in this area will still be at a disadvantage in being able to access the channel safely. This access is difficult to navigate due to eroding properties, shifting sands and changing tides. Please note that the State has not maintained these channels nor addressed the recreational needs of this area for as long as I can recall.

I am a boater and have used this entry/exit point since 1974. Over the years this area has filled with mud and DNREC has not dredged this area. Some property owners have erected some markers to try to define a channel for boaters on the northeast side of the bay in front of their homes. Boaters on the southwestern side have to hug the channel next to the east side along Schulz street. When using this exit/entry point boats need to get up on plane which creates safety issues. By granting permission to extend a dock further north would greatly increase the potential for a serious accident to occur.

I am therefore requesting a hearing so that boaters will be protected and have a voice in this decision making process.

Proposed dock for Bruner in FI

Vicki Carmean <vlcarmean@verizon.net>

Fri 9/25/2020 10:58 AM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Greetings: I have just rec'd notice of the Bruner property hearing scheduled for November 5, 2020 at 6 PM. My husband and I previously sent a letter of concern and objections to the DNREC office. Although I have just spoken to Gail Calder at the DNREC office, my husband and I would like to confirm our decision to speak at the hearing. Thank you, Vicki Carmean

Proposed Boat dock and lift at 1306 N. Schulz Road, Fl

Vicki Carmean <vlcarmean@verizon.net>

Mon 7/13/2020 4:05 PM

To: Brown, Tyler (DNREC) <Tyler.Brown@delaware.gov>; Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Dear Mr. Brown and Mr. Jones: I would like to express my concerns regarding the plans to construct docks and multiple boatlifts at the above referenced property: These plans would create a large dock that will project into a very busy section of the Assawoman Bay, causing a potentially dangerous situation for other boaters trying to access the bay from this section of the Town.

For decades long before this property and other developed lots along this street were created, this water area has been a popular recreational site for vacationers and residents. While we can appreciate that the current owner has already made some changes to his plans, it appears that boaters in this area will still be at a disadvantage in being able to access the channel safely. This access is already difficult to navigate due to eroding properties, shifting sands and changing tides. Please note that the State has not maintained these channels nor addressed the recreational needs of this area for as long as I can recall.

I do not understand how DNREC or the State can in good conscience decide to "lease subaqueous lands" when this action will create a navigational hazard for others and restrict the public use of the Little Assawoman Bay. Surely, some other provisions can be made without leasing public land at this particular spot and jeopardizing public safety. I definitely plan to attend the hearing whenever it is scheduled.

Sincerely, Vicki Carmean

FW: Public Comments on proposed lease of subaqueous lease 1306 N Schulz Rd Fenwick Island

Brown, Tyler (DNREC) <Tyler.Brown@delaware.gov>

Mon 7/13/2020 12:04 PM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Cc: Calder, Gayle H. (DNREC) <Gayle.Calder@delaware.gov>

From: Amy D Kyle <adkyle@ix.netcom.com>

Sent: Monday, July 13, 2020 10:04 AM

To: Brown, Tyler (DNREC) <Tyler.Brown@delaware.gov>

Subject: Public Comments on proposed lease of subaqueous lease 1306 N Schulz Rd Fenwick Island

July 13, 2020

Tyler Brown
Wetlands and Subaqueous Lands Section
Department of Natural Resources and Environmental Control
89 Kings Highway
Dover DE 19901

Submitted via email to tyler.brown@delaware.gov

Re: Proposed lease for convenience use of state subaqueous lands at 1306 Schulz Rd Fenwick Island

Dear Mr. Brown:

I am writing to express my concerns about the proposal to construct docks and boatlifts at the property at 1306 N Schulz Rd in Fenwick Island.

This is the subject of a public notice issued by your agency with a comment deadline of July 14, 2020.

The proposal would result in a large dock and boatlifts that extend out from the point into a heavily used part of Assawoman Bay that allows access to ramps and docks within Fenwick.

The property is directly adjacent to a channel that many Fenwick boaters need to access to get to and from the main Bay. I would note that this is a well established and historic public use for recreational, commercial, and subsistence or sport harvest purposes that predates the filling of this property and its subdivision into arguably developable lots.

This is an eroding property already. One issue that DNREC should consider is what will happen to facilities it may allow as the property further erodes. There are abandoned pilings in the area already; what will happen when the shore erodes here?

I appreciate that DNREC has asked the property owner to make some changes to reduce the incursion into the waterway and I thank you for that.

I also appreciate that DNREC actually came down here to look at the site and the channel.

I appreciate the communication from Mr. Matthew Jones, Environmental Scientist III, DNREC-WLSL Division to the Town of Fenwick Island about this matter. This is now posted at <https://fenwickisland.delaware.gov/2020/06/26/proposed-pier-and-dock-at-1306-schulz-road/>

It seems to me that DNREC has not adequately considered the longstanding public use of this area in its analysis. Mr. Jones discusses the channel and notes that there is no designated navigable channel here. The implication seems to be that DNREC should consider infringement on uses only to the extent that there is a navigable channel. However, this is not what the law requires.

I would also note that the State has not maintained the channels nor addressed the recreational needs for boating use in this area over decades, despite the extensive use of this area. Other parts of DNREC are I believe very well aware of the concerns that the people in lower Sussex County have about the lack of attention to the inland bays that they use for boating. The fact that DNREC has not done anything down here to maintain or support boating use or "navigation" does not mean that there is no such use. I recognize that this is not the responsibility of the unit handling this lease request but it should be considered in the analysis

DNREC rules define the facilities proposed to be built in the public subaqueous lands as "convenience structures." The regulation states that:

2.6.5 Convenience Structures. No convenience structure shall be constructed or used in a manner which creates a safety or navigation hazard, public nuisance, or unduly restricts public use or access to subaqueous lands. Such structures shall be relocated or removed by the person who installed, replaced or owns the structure.

From what I can tell from the information provided, it appears to me that this project will, as amended, create safety and navigation hazards and public nuisance and unduly restrict public use or access to subaqueous lands in an area that is heavily used.

Consequently, I do not believe that it is appropriate for DNREC to grant this lease as proposed at the north end of the point.

I request that you schedule a public hearing to fully examine this proposal and consider the impacts on longstanding public uses of the public resources that are proposed to be converted to private use.

I also ask that you consider what provisions need to be made to address the continuing erosion of this area in terms of the long-term stewardship of convenience structure built on public lands.

Thank you for your consideration of these comments.

I am submitting this via email but will provide a hard copy through regular mail.

Very truly yours,

Amy D Kyle
Fenwick Island

Amy D Kyle PhD MPH

adkyle@ix.netcom.com

Public Notice 09302020 #24

Kadlubar, Kathryn (DNREC) <Kathryn.Kadlubar@delaware.gov>

Tue 9/29/2020 12:09 PM

To: HearingComments, DNREC (MailBox Resources) <DNRECHearingComments@delaware.gov>

Regarding the notice for a public hearing on November 5, 2020 for the project with the following description:

James and Meredith Bruner have applied to DNREC-WLSL for a Subaqueous Lands Lease to construct and utilize a 4 by 13 foot long pier of which only a 4 by 10 foot long section of the pier will be channelward of the mean high water line, a 6 by 45 foot long "L" dock and to install a boatlift with four (4) associated pilings and an elevator lift on two (2) associated pilings abutting the dock in the Little Assawoman Bay at 1306 N. Schulz Road, Fenwick Island, Sussex County, DE.

DFW Species Conservation and Research Program originally provided the comments below back in July when this project was first put on public notice:

This area is good habitat for young-of-the-year (YOY) summer flounder (*Paralichthys dentatus*), which have both commercial and recreational importance in the State of Delaware. Due to this importance, we recommend a time of year restriction on pile driving between **March 15th – September 30th**.

We would like to submit this same comments for this public hearing and ask that this time-of-year restriction for summer flounder is incorporated into the permit conditions.

Thank you,

Katie

Katie Kadlubar

Environmental Review Coordinator
Species Conservation & Research Program
Delaware Division of Fish & Wildlife
Phone: (302) 735-8665

Delaware Division of Fish & Wildlife

***We Bring You Delaware's Great Outdoors
through Science and Service***

Find us on Facebook: www.facebook.com/DelawareFishWildlife

Public Comment: Proposed Dock at 1306 N. Schulz Road, Fenwick Island, DE

steven Magdeburger <smagdeburger08@gmail.com>

Fri 7/10/2020 10:33 AM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Matt,

Following up on our earlier phone conversation, and having had an opportunity to review the recent public notice, I remain concerned about the potential adverse impacts of the project as proposed.

I respectfully request a public hearing in the above referenced matter. I have reviewed the comments recently submitted to you by Brandon Bortner of 1303 N. Schulz Rd. and am in agreement with those comments.

Steven D. Magdeburger
32 Ebb Tide Cove
Fenwick Island, DE 19944
(443) 240-4692

Fwd: request for 30 day review for subaqueous lease in Fenwick Island**Brown, Tyler (DNREC)** <Tyler.Brown@delaware.gov>

Thu 5/21/2020 8:13 PM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov> 1 attachments (739 KB)

B_ Food & Drink.pdf;

FYI

Sent from my Verizon, Samsung Galaxy smartphone

From: Amy D Kyle <adkyle@ix.netcom.com>**Sent:** Thursday, May 21, 2020 8:06:35 PM**To:** Brown, Tyler (DNREC) <Tyler.Brown@delaware.gov>**Cc:** Lynn Andrews <LYNDAVEARC@aol.com>; Janet Hess <wmrhess@aol.com>; Cathy Stump <SRQTBALL@aol.com>; Anne Hodges <annehodges1303@hotmail.com>; Fenwick Neighbors at FISH <fenwickneighbors@gmail.com>**Subject:** RE: request for 30 day review for subaqueous lease in Fenwick Island

As I mentioned, we didn't get a copy of the notice, and I can't see where they are posted at DNREC, but I tracked it down in the Wilmington News Journal in the Food and Drink section on April 29.

I am attaching the markup of the notice.

It is for the project at 1306 N Schulz Road for a 4x28 foot pier plus a 6x35 foot dock plus a boatlift with four pilings. James Russell Bruner. This is quite a lot of construction, and the channel, such as it is, is close to that bulkhead. What looks like open water beyond that is where there used to be an island and is very shallow.

Thank you for your consideration of this request.

cheers

adk

Amy D Kyle PhD MPH

adkyle@ix.netcom.com

-----Original Message-----

>From: "Brown, Tyler (DNREC)" <Tyler.Brown@delaware.gov>

>Sent: May 21, 2020 3:56 PM

>To: Amy D Kyle <adkyle@ix.netcom.com>

>Cc: Lynn Andrews <LYNDAVEARC@aol.com>, Janet Hess <wmrhess@aol.com>, Cathy Stump <SRQTBALL@aol.com>, Anne Hodges <annehodges1303@hotmail.com>, Fenwick Neighbors at FISH <fenwickneighbors@gmail.com>

>Subject: RE: [SUSPECTED SPAM] request for 30 day review for subaqueous lease in Fenwick Island

>

>Hello Amy,

>

>Could you please let me know exactly what project you're are referencing? The Wetlands and Subaqueous Lands Section processes hundreds of applications every year and several in the immediate area. The public notice you're referencing contains two projects in Fenwick Island. Please let me know your project of concern.

>

>Sincerely,

>

>

>Tyler Brown

>Environmental Program Manager

>Wetlands and Subaqueous Lands Section

>Delaware Department of Natural Resources

>302-739-9943 (Office)

>302-922-1510 (Cell)

>

>

>

>-----Original Message-----

>From: Amy D Kyle <adkyle@ix.netcom.com>

>Sent: Thursday, May 21, 2020 5:43 PM

>To: Brown, Tyler (DNREC) <Tyler.Brown@delaware.gov>

>Cc: Lynn Andrews <LYNDAVEARC@aol.com>; Janet Hess <wmrhess@aol.com>; Cathy Stump <SRQTBALL@aol.com>; Anne Hodges <annehodges1303@hotmail.com>; Fenwick Neighbors at FISH <fenwickneighbors@gmail.com>

>Subject: [SUSPECTED SPAM] request for 30 day review for subaqueous lease in Fenwick Island

>

>

>Greetings,

>

>I am writing to request that DNREC extend the public comment period on a proposal for a lease of subaqueous land in or adjacent to Fenwick Island in the vicinity of Shultz Road off the point to the north. A review period for this project was initiated on April 29 but apparently has already closed after 20 days.

>

>This requested action is of significant concern because it is for construction of a project that would seem likely to obstruct use of a well traveled waterway.

>

>The notice was published in Wilmington and Dover but, for whatever reason, not in the papers circulated in this area. As best I can tell, the Town of Fenwick Island is not aware of it and was not included on the distribution.

>

>I am writing on behalf of the homeowners association, Fenwick Island Society of Homeowners, aka

FISH.

>

>Particularly in light of the severe dislocation of the pandemic, we request the courtesy of 30 day review period that would end at the end of this month, at a minimum.

>

>I look forward to your response. I have copied this email to other members of the Board of FISH. Please reply to my email address or to the email address for FISH <fenwickneighbors@gmail.com> if you prefer.

>

>I am unable to reach the person identified by DNREC as key staff for this matter because no email is listed and her phone mail box is full and accepting no messages. I am writing to you because it appears that you may be in charge of this unit. If not, please forward this to the appropriate person.

>

>Thank you for your assistance with this matter and for considering the interests of the people of Fenwick Island and users of Little Assawoman Bay.

>

>Sincerely,
>Amy D Kyle

>

>Newsletter Editor and Policy Analyst
>Fenwick Island Society of Homeowners

>

>Fenwick address: 1205 Bunting Ave, Fenwick Island DE 19944

>

>

>Amy D Kyle PhD MPH
>adkyle@ix.netcom.com

Proposed docks 1306 N Schultz

traceyamcc@aol.com <traceyamcc@aol.com>

Wed 5/27/2020 10:43 PM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Dear Mr. Jones:

Just responding to the proposal for 1306 N. Schultz building of dockage and piers for new owners.

We are thrilled that the long for sale property has a new owner. We are certainly happy to welcome wonderful neighbors to the FI community; however, we do believe that the proposed plan would indeed cause a navigational hazard building North as so many boaters are forced along that bulkhead to keep from grounding in shallow waters. Low tides in that area expose significant shallows and the only safe passage is in a channel along that side of the land. The homeowner certainly needs to have his dock but we feel a more reasonably sized dock with the boat lift would be an acceptable compromise. Building such a dock protruding into the channel, actually across the channel is certainly concerning and will definitely cause a hazard to boaters, kayakers, sailboats and paddle boarders who frequent these waters.

We are long time homeowners in Fenwick and we know that you will exercise judicial prudence while contemplating this important decision and we appreciate that very much.

Please let us know if you would like to further discuss this matter anytime.

Sincerely,

Tracey and Scott McCracken
22 W. Farmington Street
Fenwick Island, DE. 19944
302-593-1503

Sent from AOL Mobile Mail
Get the new AOL app: mail.mobile.aol.com



Subaqueous Lands Permit Application

Delaware Department of Transportation (adjacent to 332-1.07-153.00)-To temporarily impact approximately 1,731 square feet of Broad Creek for stream diversion and dewatering for the rehabilitation of bridge 3-162, on Delaware Ave, Laurel, Sussex County, DE

DFW Comments: Below are comments provided to DelDOT in February of 2020.

State Natural Heritage Site

A review of our database indicates that there are currently no records of state-rare or federally listed plants, animals or natural communities at this project site. As a result, at present, this project does not lie within a State Natural Heritage Site, nor does it lie within a Delaware National Estuarine Research Reserve which are two criteria used to identify “Designated Critical Resource Waters” in the Army Corps of Engineers (ACOE) Nationwide Permit General Condition No. 22. A copy of this letter shall be included in any permit application or pre-construction notification submitted to the Army Corps of Engineers for activities on this property.

Migratory Birds

Bridge 3-162 has not been surveyed for the presence of nesting migratory birds, which are protected by Title 7, Delaware Code, Chapter 7, Sections 734 and 735. It is possible that one or more pairs of barn swallow (*Hirundo rustica*) and/or Eastern phoebe (*Sayornis phoebe*) nest under the bridge(s). If work is proposed during the breeding season (**April 15 – August 1**), a survey should be completed prior to the start of work to determine if nests are present. If a survey detects nesting activity, the following steps should be taken to avoid nest destruction and take, which is a violation of state law:

1. Perform construction activities from **August 1 to April 15**.
2. If construction cannot be performed in this time period, a deterrent such as mesh netting should be used to block access to nesting sites on the underside of the bridge(s). The material would need to be in place no later than **April 15**, the underside of the bridge(s) would need to be fully encapsulated, and the material should be left in place until construction begins.

If active nests are discovered during the course of work, activities should be halted immediately and SCRP contacted for further guidance.

Fisheries

Atlantic Sturgeon

The occurrence of Atlantic Sturgeon (*Acipenser oxyrhynchus*) in the Nanticoke River watershed has been confirmed. More specifically, Atlantic Sturgeon have been detected just 1.6 miles downstream from the project site using telemetry equipment, and captured just 3 miles downstream. This species is listed as endangered under the U.S. Endangered Species Act. Data collected through sampling efforts and acoustic telemetry suggest this

species is likely inhabiting the river system from approximately **August 15th through November 1st**. A time of year restriction on all project activities during this time is recommended to avoid impacts to this species. Note that these data are based on a project in the first few years of study and recommendations may change in the future. Also note that a Section 7 consultation may be required.

Other Anadromous Species

Broad Creek is utilized during upstream migration by several fish species of concern. American shad (*Alosa sapidissima*), blueback herring (*Alosa aestivalis*), and alewife (*Alosa pseudoharengus*) collectively known as alosines, utilize the river during spawning and then as a nursery habitat for young-of-the-year.

Habitat degradation is one factor leading to a decline in the populations of these species. American shad numbers have indicated serious declines along the East Coast and is a species currently undergoing restoration efforts on the Nanticoke River. Alewife (*Alosa pseudoharengus*) and blueback herring (*Alosa aestivalis*), often collectively referred to as 'river herring', are listed by the National Marine Fisheries Service as a Species of Concern. In addition, these species are important to both commercial and recreational fisheries and form an important forage base for other fish and animal species.

In Delaware, these species spawn between late March and mid-May. Note that Records Pond, which is just upstream of the project site, forms an impediment to upstream migration and as a result there is great potential for these species to be concentrated in the study area during the spring spawning run. Project activities should be completed prior to **March 15 or after June 1** to avoid affecting these species.

Also, alosines are very sensitive to changes in their natural environment and if in-water or shoreline work is proposed, efforts should be made to: 1) minimize noise transmitted into the water column (i.e. driving piles) as not to interrupt their migration upstream, 2) minimize sedimentation, 3) maintain adequate shoreline buffers to protect water quality and 4) minimize the replacement of natural shoreline with hard materials (i.e. rip-rap, bulkheads, etc.) when feasible.

Largemouth Bass

In addition, there is a viable resident Largemouth Bass population in Broad Creek that supports the state's most popular freshwater fishery. Bass are a nest building species, and in tidal rivers they spawn in shallow areas out of the current in coves, marina basins, and backwaters found near spillpools, such as that by Records Pond. An acoustically tagged bass was detected on a receiver installed near the Records spillway in the spring of 2019, which coincides with the spawning season. The movement of bass through the project area to the spillway for spawning likely overlaps with anadromous fish species, so the time of year restriction requested above should also minimize impacts to Largemouth Bass.

Mussels

Northern Lance (*Elliptio fisheriana*) historically have been documented in Broad Creek in the vicinity of the proposed project. Northern Lance is a freshwater mussel that is a species of conservation concern in Delaware because it is rare in the state. On a visit to this site on February 4, 2020, DNREC-DFW staff did not locate any occurrences of

Northern Lance; however, this does not rule out the possibility that this species could still be present at the site. Freshwater mussels bury themselves into the streambed during the winter, so they are more difficult to locate during this time.

Because freshwater mussels are filter feeders and have a long lifespan and complex life cycle, they are sensitive to sedimentation and pollutants and often serve as excellent indicators of water quality. Impacts to this population of freshwater mussels can be minimized by using best management practices to decrease downstream sedimentation during construction activities. Northern Lance spawn in the spring and early summer, so the time of year restriction requested above for anadromous fish species (**March 15 - June 1**) should also reduce impacts to spawning mussels. Additionally, DelDOT should take measures that ensure that any wood preservatives or epoxies that are injected into the bridge structures are contained and not allowed to flow into the creek.

Thomas Ghigliotty (134-12.00-1537.00)-To install a boatlift with four (4) associated pilings in White's Creek at 6 Tingle Street, Ocean View, Sussex County, DE

DFW Comments:

A population of the state-rare fish, Fourspine Stickleback (*Apeltes quadracus*), was observed upstream from this site during surveys conducted in 1958. Subsequent surveys have not been conducted, therefore, it is unknown if it still persists at this location. If habitat conditions have remained relatively stable the population likely still persists. Because this species is dependent on calm, shallow, heavily vegetated waters for spawning, efforts should be made to avoid direct impacts to submerged aquatic vegetation (if present) and to decrease sedimentation during project activities. *If aquatic vegetation is prevalent in the project area, then a spawning window of April 1 to May 30 should be considered.*

Delaware Department of Transportation (adjacent to 0701200073)-To replace two (2) bridges, temporarily impacting approximately 358 square feet subaqueous lands and permanently impacting 1,279 square feet of subaqueous lands at bridge 1-086 in an unnamed tributary to Wilson Run, and bridge 1-085 in Wilson Run, including stream relocation, placement of fill for roadway reconstruction, drainage improvements and utility relocations on Pyles Ford Road, Greenville, New Castle County, DE

DFW Comments:

Below are comments provided to DelDOT in August 2019:

Bog Turtle

The following comments have been developed in coordination with the U.S. Fish and Wildlife Service:

A review of our database has revealed that there may be suitable habitat for the federally listed bog turtle (*Glyptemys muhlenbergii*) within or near the proposed project area. Bog turtles typically occur in freshwater wetlands with open canopies, mucky soils, and tussock vegetation. However, they can occur in more marginal habitats as well. Because the bog

turtle is a federally listed species, protected under the Endangered Species Act, its presence can affect the scope of work.

To ensure that the project will not impact bog turtles or their habitat, a Phase I survey for bog turtle habitat should be conducted within and including 300 feet of the project limit of disturbance (LOD). Phase I surveys can be conducted any time of year when ice and/or snow cover is not present. If potential habitat is found, however, please note there is a time of year restriction during which Phase II surveys for bog turtles must be conducted. A Delaware approved qualified bog turtle surveyor (QBTS) must be used to conduct any bog turtle surveys or monitoring. Please contact Nate Nazdrowicz (Nathan.nazdrowicz@delaware.gov or (302) 735-8688) to obtain a list of contacts to conduct Phase I and, if necessary, Phase II and/or trapping surveys or monitoring.

If potential bog turtle habitat is found during Phase I surveys, you are required to either:

1) Assume bog turtle presence and employ a QBTS to monitor construction activity occurring within or near bog turtle habitat, in consultation with the U.S. Fish and Wildlife Service and Delaware Division of Fish and Wildlife;

OR

2) Have surveys (Phase II and/or trapping) conducted to determine if bog turtles are present. In accordance with Delaware's bog turtle site survey procedures, surveys must be conducted by a QBTS between April 15 and June 15. Please note that surveys may confirm presence of turtles, but cannot confirm absence and guidance to minimize impact to the habitat may be applicable even if bog turtles are not found during surveys.

Tree Mitigation

If there is any tree removal proposed for this project, we encourage the Department of Transportation (DelDOT) to make every reasonable effort to preserve large, mature trees; removing only the minimum number of trees necessary. If clearing is unavoidable, we recommend DelDOT follow the Mitigation Needs Analysis as outlined by Title 17, Delaware Code, Chapter 1, Section 209. Our staff botanist, Bill McAvoy (William.mcavoy@delaware.gov), can provide guidance in selecting plant material suitable for replanting at this site.

Conservation Easement

The proposed work is adjacent to a Conservation Easement. The applicant may need to coordinate with Elena Stewart, Delaware State Parks Land Preservation Specialist (Elena.Stewart@delaware.gov or 302-739-9935).

Fisheries

The Division of Fish and Wildlife does not have fish community data for the project location. However, it is unlikely that habitat occurs in the project site that would support anadromous fish species. No time of year restrictions or other measures are requested for these species or for resident gamefish species.

Jim Stevens and Alicia Tompkins (3-34-20.09-176.02) -To construct a 4 by 8 foot pier and a 5 by 12 foot dock and to install 60 feet of coir-logs, planted with native plants to create a living shoreline at 131 Chesapeake St, Dewey Beach, Sussex County, DE

DFW Comments: None

Christopher Durante (533-19.00-147.00)-To construct a 5 by 20 foot dock extension and a 4 by 12 foot floating dock with 3 by 3 foot steps located at 35693 Clamshell Circle, Bayview Estates, Selbyville, Sussex County, DE

DFW Comments: None

Unionville Rowing Club, Inc. (2605000034)-To install a 12 by 30 foot gangway, a 16 by 20 foot floating dock, an 8 by 40 foot floating dock and two (2) approximately 40 foot steel cables in the Christina River at 301 A Street, Wilmington, New Castle County, DE

DFW Comments:

Sturgeon and Anadromous Species

The location of this project may harbor Atlantic Sturgeon (*Acipenser oxyrinchus*) and Shortnose Sturgeon (*Acipenser brevirostrum*), two species that are listed as Endangered under the Endangered Species Act (ESA). Furthermore, the Delaware Division of Fish and Wildlife is requesting that no in-water work occur from March 15th through June 30th to minimize impacts to Sturgeon and other commercially and recreationally valuable species during their spawning periods.

Claymont Properties (0607300001)-To fill a sedimentation and cooling water swale and to repair and replace an existing stormwater outfall structure and associated rip-rap on Naamans Creek at 5988 Philadelphia Avenue in Claymont, New Castle County, DE

DFW Comments:

Fisheries

The area of the Delaware River downstream of the proposed outfall is near habitats utilized by the federally endangered Atlantic Sturgeon (*Acipenser oxyrinchus*) and federally endangered shortnose Sturgeon (*Acipenser brevirostrum*). Probability distribution maps suggest that a high concentration area for Atlantic Sturgeon exists near the project site¹ and coincide with substrate appropriate for Atlantic Sturgeon spawning². Delaware Division of Fish and Wildlife biologists have documented young-of-the-year Atlantic Sturgeon consistently utilizing habitat to the north of the project site as well.

¹ Breece M.W., M.J. Oliver, M.A. Cimino, and D.A. Fox. 2013. Shifting distributions of adult Atlantic Sturgeon Amidst Post-Industrialization and future impacts in the Delaware River: a maximum entropy approach. PLOSOne 8(11).

² Sommerfield C.K. and J.A. Madsen. 2003. Sedimentological and geophysical survey of the Upper Delaware Estuary. Final Report to Delaware River Basin Commission. University of Delaware College of Marine Studies and Department of Geology.

Please note that the project parcels encompasses areas of the Delaware River where the federally listed Atlantic Sturgeon occurs, but it does not appear the proposed work will intersect with the Delaware River. It is necessary to ensure that effective measures are taken to contain contaminants onsite, so that these contaminants are not released into important Sturgeon habitats. Monitoring should be conducted during the project activities to ensure that such contaminant containment measures are effective.

Steven Price Norman, Trustee (134-18.00-38.00 and 13.03)-To fill for road widening, install a stormwater outfall and utility crossing on Beaver Dam Tax Ditch at 34702 Cider Lane in Frankford, Sussex County, DE

DFW Comments: None

Honeywell International, Inc. (0607300002)-To remove 500 linear feet of contaminated sediment from the lower sluiceway with placement of a low permeability cover and erosion protection armoring at the Delaware Valley Works Site in Claymont, New Castle County, DE

DFW Comments:

This area of Delaware River is near habitats utilized by the federally endangered Atlantic Sturgeon (*Acipenser oxyrinchus*) and federally endangered Shortnose Sturgeon (*Acipenser brevirostrum*). Probability distribution maps suggest that a high concentration area for Atlantic sturgeon exists near the project area³, and coincide with substrate appropriate for Atlantic sturgeon spawning⁴. This area of Delaware River has been identified as significant juvenile Atlantic sturgeon habitat as well⁵. The Delaware River is also utilized by striped bass (*Morone saxatilis*) for spawning during April-June. Large numbers of American shad (*Alosa sapidissima*) pass through this area April-June during upstream migration. Although these two species are not listed as endangered or threatened, they are an important resource in terms of recreational and commercial fisheries.

To protect anadromous species, including spawning Atlantic sturgeon, in-water work should not take place from March 15th to June 30th. Moreover, we encourage work to be conducted between August and early October, if possible, as this window will ensure that both disturbance to spawning anadromous species (including sturgeon) are avoided and impacts to larvae and juveniles are minimized. This recommendation is important because the capping/armoring could create a sediment plume that could affect eggs and larvae that may be present in adjacent habitats. Additionally, measures to contain sediment on-site (e.g. turbidity curtain) should be employed regardless of the time of year

³ Breece M.W., M.J. Oliver, M.A. Cimino, and D.A. Fox. 2013. Shifting distributions of adult Atlantic sturgeon Amidst Post-Industrialization and future impacts in the Delaware River: a maximum entropy approach. PLOSOne 8(11).

⁴ Sommerfield C.K. and J.A. Madsen. 2003. Sedimentological and geophysical survey of the Upper Delaware Estuary. Final Report to Delaware River Basin Commission. University of Delaware College of Marine Studies and Department of Geology.

⁵ Hale, A.H., I.A. Park, M.T. Fisher, R.A. Wong, M.J. Stangl, and J.H. Clark. 2016. Abundance Estimate for and Habitat Use by Early Juvenile Atlantic Sturgeon within the Delaware River Estuary. Transactions of the American Fisheries Society 145: 1193-1201.

project activities take place, as juvenile sturgeon are present in Delaware River throughout the year.

Because these sturgeons are federally protected under the U.S. Endangered Species Act, note that if this is a project that requires a federal permit, Section 7 consultation may be required. Also note that this area of Delaware River has been proposed by the National Marine Fisheries Service as Atlantic sturgeon Critical Habitat.

Subaqueous Lands Lease Renewal Application

Michael McCann (8-00-130.02-01-39.00-1000)-To maintain a 4.5 foot by 16.5 foot pier in Pratt Branch, at 94 Lea Court, Riverview Estates, Frederica, Kent County, DE

DFW Comments: None

Richard and Sharon Robinson (1-34-23.12-23)-To maintain and utilize a 5 by 20 foot dock in Little Assawoman Bay at 1211 N. Schulz Road in Fenwick Island, Sussex County, DE

DFW Comments: None

Darrick Elliott (233-11.00-82.00)-To maintain 133 feet of bulkhead and a 4 by 16 foot dock on a tax ditch at 28539 Oak Landing Road in Dagsboro, Sussex County, DE

DFW Comments: None

Subaqueous Land Lease Application

James Russell Bruner (1-34-23.12-16.00)-To construct a 4 by 13 foot pier but only a 4 by 10 foot section will be channelward of the mean high water line, a 6 by 45 foot "L" dock and to install a boatlift with four (4) associated pilings and an elevator lift on two (2) associated pilings abutting the dock in the Little Assawoman Bay at 1306 N. Schulz Road, Fenwick Island, Sussex County, DE

DFW Comments:

Summer Flounder:

This area is good habitat for young-of-the-year (YOY) summer flounder (*Paralichthys dentatus*), which have both commercial and recreational importance in the State of Delaware. Due to this importance, we recommend a time of year restriction on pile driving between **March 15th – September 30th**.

Subaqueous Lands Permit and Wetlands Application

Delaware Department of Transportation (adjacent to 1004500007 and 1004110023)-To replace two (2) bridges, temporarily impacting approximately 0.0469 acres of subaqueous lands, permanently impacting 0.0181 acres of subaqueous lands, temporarily impacting 0.0223 acres of State-regulated wetlands, permanently impacting 0.0304 acres of State-regulated wetlands, and creating 0.0061 acres of open water creation at bridge 1-302 in Tom Creek, and bridge 1-304 in Gambles Gut, both located on River Road (SR 9), New Castle, New Castle County, DE

DFW Comments: The following comments were submitted to DelDOT on 20 May 2019.

State Natural Heritage Site

A review of our database indicates that there are currently no records of state-rare or federally listed plants, animals or natural communities at this project site. As a result, at present, this project does not lie within a State Natural Heritage Site, nor does it lie within a Delaware National Estuarine Research Reserve which are two criteria used to identify “Designated Critical Resource Waters” in the Army Corps of Engineers (ACOE) Nationwide Permit General Condition No. 22. A copy of this letter shall be included in any permit application or pre-construction notification submitted to the Army Corps of Engineers for activities on this property.

State Wildlife Area

The proposed projects are adjacent to State Wildlife Area lands. In order to minimize interruption of access to users to the area during active times of year (e.g. hunting seasons), SCRPs requests that DelDOT coordinate with Eric Ludwig, regional manager for New Castle County. Eric can be reached at (302)834-8433.

Key Wildlife Habitat

The wetlands in both project areas are mapped as Mixed Broadleaf Freshwater Tidal Marsh, which is a Habitat of Conservation Concern in the Delaware Wildlife Action Plan because it is rare in the state and has the potential to harbor a high diversity of Species of Greatest Conservation Need (SGCN).

Soil Disturbance

Soil disturbance within the project boundaries will likely result in the establishment of the non-native invasive grass - European reed (*Phragmites australis* subsp. *australis*), as well as other potentially invasive, non-native plant species. We recommend that, as a condition of the permit, the applicant revegetate the area using native plant species that are indigenous to the state of Delaware and are appropriate for the site. Our staff botanist, Bill McAvoy (William.mcavoy@delaware.gov) can provide guidance in selecting plant material. In addition, we also recommend that the applicant commit to a two-year monitoring and management plan that would include the removal of non-native invasive plants and additional plantings of native species as necessary.

Fisheries

No time of year restrictions or other measures are requested for these species or for resident gamefish species.

These Documents/Applications above are available for review by contacting:

Gayle Calder
Wetlands and Subaqueous Lands Section
89 Kings Highway
Dover, DE 19901
(302) 739-9943 FAX (302) 739-6304

If you have any comments, please return this memo to this office by July 14, 2020.

A public hearing on the above applications will NOT be held unless the Secretary of DNREC determines that a public hearing is in the public interest or if a written meritorious objection to the application is received within 20 days from this notice. Please indicate in your letter whether your intention is to request a public hearing or whether you are simply providing comments for the Department's consideration. If a public hearing is desired, please be advised that a public hearing request shall be deemed meritorious if it exhibits familiarity with the application and provides a reasoned statement of the action's probable impact.

PUBLICATION INSTRUCTIONS:

PLEASE PUBLISH AS A 2-COLUMN DISPLAY AD IN THE FOLLOWING:

DELAWARE STATE NEWS- Wednesday June 24, 2020

NEWS JOURNAL - Wednesday June 24, 2020

BILLING INFORMATION: 400403

DNREC, DWR, Gayle Calder

89 KINGS HIGHWAY, DOVER, DE 19901

FW: James Russell Bruner (1-34-23.12-16.00) application

Calder, Gayle H. (DNREC) <Gayle.Calder@delaware.gov>

Fri 6/26/2020 2:27 PM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

From: Lee Ann Reich <leeann@crofmaryland.com>
Sent: Friday, June 26, 2020 2:16 PM
To: Calder, Gayle H. (DNREC) <Gayle.Calder@delaware.gov>
Subject: James Russell Bruner (1-34-23.12-16.00) application

I see this is on public notice. I own a home in Fenwick island.
Can you send me the application for review?

Thank you
Lee Ann

[Redacted signature area]

Lee Ann Reich

CELL: [callto://+17175772084]717.577.2084

leeann@crofmaryland.com

www.CRofMaryland.com

[Redacted signature area]

DATE: 5/13/2020

TO: Department of Natural Resources & Environmental Control
Wetlands & Subaqueous Lands Section
89 Kings Highway
Dover, DE 19901

FROM: Steven Ross

SUBJECT: Comments on PROJECT NOTICE 12 - Pending Application for Subaqueous Land Lease Application by James Russel Bruner

I am Steven Ross, Trustee of the Steve Ross Living Trust which owns the property on 1307 N Schultz. This property is adjacent to the 1306 N Schulz, the property of the subject Subaqueous Land Lease Application.

The notice states the following:

- James Russel Bruner – To construct a 4 by 28-foot long pier, a 6 by 35-foot long dock, and to install a boat lift with four (4) associated pilings in the Little Assawoman Bay at 1306 N. Schulz Road, Fenwick Island, Sussex County, DE.

I have also received a copy of the full application which includes the plans showing the pier running north, starting 15 feet east of the eastern property line extending 16 feet into the bay. At the end of the pier, the dock extends another 6 feet north into the bay and 35 feet to the west. Furthermore, the boat lift extends another 12 feet into the bay. In total, the structure will extend 34 feet into the bay north of Old Inlet Point.

I have the following comments:

- Although it may not be obvious from above, there is a very narrow channel deep enough for boats to travel that exists quite close to where this boat lift is planned. All other water north to where Seal Island is submerged is very shallow making this a very high traffic area for boats, which often travel at high speed so they can plane above the shallow water nearby (see Exhibit A).
 - This structure creates a blind that obstructs the vision of boats going around the point where many recreational enthusiasts are slow-moving, non-motorized, kayakers, stand up boarders, sail boater, and others who might be unseen by faster-moving watercraft; and
 - The structure will also be a safety hazard to boats themselves that have no alternative other than traveling at high speed close to this proposed structure;
 - The location of the boat lift will subject Mr. Bruner's moored boat to frequent waves caused by the wake of high-speed boats.
- The structure is placed directly off land that FEMA has designated as a VE flood zone – a coastal area with a 1% or greater chance of flooding and an additional hazard associated

with storm waves. This means that during storms, the strongest wave action will fall upon the pier. The worst storms approach from the North and North East.

- This will place the boat and structure at a higher risk of storm damage.
- The structure is placed on the side of the property where the water is shallow. There is a channel on the west side, directly adjacent to the property.
 - This current placement requires a longer pier to reach water deep enough for the boat lift which requires more pilings, making installation more disruptive to the environment, costing more, and hampering safety by further reducing visibility.
- All other docks on N. Schultz on both the west and east side of Old Inlet point, are in line with the channel that flows parallel to and adjacent to the east and west side of the point. See Exhibit B.
 - This proposed dock would be the only one flowing North.
- Many of the above concerns can be mitigated or eliminated by placing the dock and pier on the west side of the point as proposed in Exhibit C.
 - The structure will not be close to a channel where boats frequently travel fast;
 - The structure will receive less impact from storms;
 - The structure will have a shorter pier, reducing construction costs;
 - The structure will not impede the visibility of boats traveling at high-speed on the channel thus reducing the likelihood of a collision with slow-moving, non-motorized, kayakers, stand up boarders, sail boaters; and others.
 - The structure will be in line with similar structures on both the east and west sides of N. Shultz Road.

Thank you for considering my comments. I can be reached at 301-651-3848 or coolgen10@gmail.com.



Steve Ross

Trustee of the Steve Ross Living Trust

Property Address:

1307 N Schultz Rd

Mailing Address:

6901 Carlynn Ct

Bethesda, MD 20817

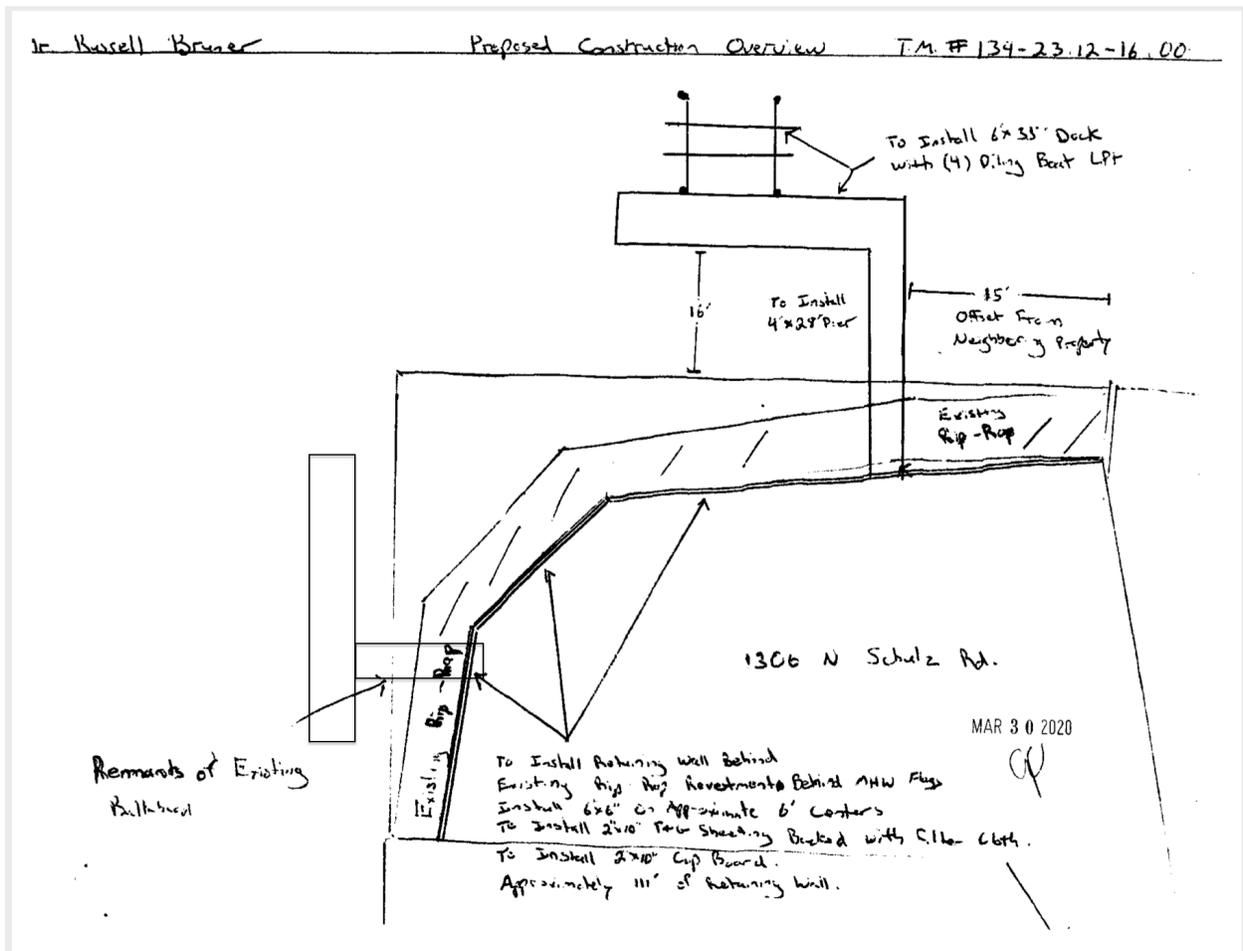
Exhibit A – Dangerous Flow of Boat Traffic Near Proposed Peer, Lines represent boat traffic; Green and Red makers are the channel markers.



Exhibit B – Arial view of Old Inlet Point – Note that no docks or piers extend north and all property has closely set docks or small piers to next to the channel that runs along the east and west sides of the point.



Exhibit B – Proposed position of pier and dock on the west side of the property that minimizes safety issues.



1306 N. Schulz Road, subaqueous Land Lease Application

Sue Ellen Clark <fenwicksue@aol.com>

Mon 7/13/2020 10:14 PM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Cc: Bob Clark <hozbo@aol.com>

Dear Mr. Jones and Mr. Brown,

Please consider our concerns to review the information on the proposed subaqueous land lease application for 1306 N. Schulz Road.

As a resident of 1100 and 1102 North Schulz Road since 1955, this land was located on the Isle of Bali High, the perimeter of this island was dredged to the depth of 10 feet to fill in the island. Over the years this depth has filled in, due to the tides and erosion, and various storms.

North of the point (1306 N. Schulz Road) used to be an island called "Seal Island", which was the home of the Fenwick Island Yacht Club. Seal Island was a large piece of land that has been destroyed by the snow geese pulling up the vegetation. That soil that used to be that island has filled in the surrounding area to a very shallow depth.

The point of land, 1306 N. Schulz Road, and the adjoining property have the deepest water for the power boats to be able to get up on plain. Currently there is a blind spot for power boats, kayaks, sailboats and other watercraft attempting to navigate that corner.

Putting in the proposed pier and boat lift will necessitate all watercraft to be approximately 18 feet further into the shallow water. There has never been a channel dug approaching from the East. Someone has place PVC pipe to appear as though there is a marked channel.

The next major problem is the exposed propeller of the boat on the lift that could cause serious damage or injury if anyone would run into it.

Please consider all of the above facts before considering this land lease.

Sincerely,

Robert E. Clark (former commodore of The Fenwick Island Yacht Club)

Hozbo@aol.com

Sue E. Clark

1100 N. Schulz Road

Fenwick Island, DE 19944

Sent from my iPad

Pier in Fenwick Island

McCracken, Taylor J. (Student) <tmccracken001@my.wilmu.edu>

Wed 5/27/2020 8:58 PM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Good-evening Matthew.

I hope this email finds you well in a time of uncertainty. Fortunately, we seem to be making steps in the right direction as a community and I look forward to continued progress.

With regard to community, I wanted to voice my concern pertaining to a planned pier at 1306 North Shulz Road in Fenwick Island Delaware. My family and I are part time residents at 22 West Farmington Street and we utilize the navigable waters in the area. The proposed North protruding pier will not only severely interfere with the navigable waters for my family but for the surrounding community and visitors. Additionally, the large North protruding pier creates a blind spot for boats trying to navigate the waters which poses unnecessary risk. The risk is unnecessary because a reasonable West protruding pier is an obvious acceptable option posing less risk and inference to navigable waterways.

The adjacent properties utilizes both the East and West sides of the land mass (N. Shulz Rd) for their docks making the argument that the resident at 1306 N. Shulz Road could add a West protruding pier without endangering fellow community members and restricting navigable access. Per the SAA, structures shall not interfere with navigable access to adjacent properties.

There is reasonable evidence that I would be happy to draw out or discuss further regarding this matter. This may be a small issue respectively, but it is vital to uphold the safety and waterways for the community and visitors that make Fenwick Island flourish.

Thank you and I wish you well.

Taylor McCracken
302-932-3192

Get [Outlook for iOS](#)

RE: Proposed Pier and Doc at 1306 N Schultz

Teresa Tieman <townmgr@fenwickisland.org>

Tue 6/30/2020 9:35 AM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>**Cc:** Pat Schuchman <Pschuchman@fenwickisland.org> 1 attachments (582 KB)

1306 Schultz Road Public Hearing Request 06302020_001.pdf;

Good morning Matt,

I want to thank you for the email below. This was made part of the Council packet and reviewed at our Council meeting on June 26, 2020. Council commended you on the thorough job. As a result, none of the Council spoke out against the project. They did make a motion to request a public hearing. I submitted that letter today and it is attached for your convenience. I believe the public hearing request came from the continued expressions of concern from the community.

We have made the public notice available on our website.

Please feel free to contact me if you would like to discuss. Again, thank you for all the information and meeting with us.

Best regards,**TERRY TIEMAN** | Town Manager ICMA-CM

Town of Fenwick Island

800 Coastal Highway | Fenwick Island, DE 19944

p: 302.539.3011 ext. 203 f: 302.539.1305

e: townmgr@fenwickisland.orgfenwickisland.delaware.gov**SUMMER SAFELY**

Confidentiality Notice: The information contained in this e-mail communication and any attached documentation may be privileged, confidential or otherwise protected from disclosure and is intended only for the use of the designated recipient(s). It is not intended for transmission to, or receipt by, any unauthorized person. The use, distribution, transmittal or re-transmittal by an unintended recipient of this communication is strictly prohibited without express approval in writing or by e-mail. If you are not the intended recipient of this e-mail, please delete it from your system without copying it and notify the above sender so that the e-mail address may be corrected.

From: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>
Sent: Friday, June 12, 2020 1:47 PM
To: Teresa Tieman <townmgr@fenwickisland.org>
Subject: Re: Proposed Pier and Doc at 1306 N Schultz

Good afternoon Teresa,

Per our conversation yesterday I have provided a recap of the project to date. Also attached are the revised plans.

Please let me know if you need anything else.

Background:

The project was placed on Public Notice # 12 on April 29, 2020 and came off of Public Notice # 12 on May 19, 2020. The project was advertised in two statewide distributed newspapers (per our regulations) as well as on the public notice section of the DNREC website (<https://dnrec.alpha.delaware.gov/public-notices/>). The following was advertised:

" James Russell Bruner (1-34-23.12-16.00)- To construct a 4 by 28 foot long pier, a 6 by 35 foot long dock and to install a boat lift with four (4) associated pilings in the Little Assawoman Bay at 1306 N. Schulz Road, Fenwick Island, Sussex County, DE".

During the public notice period (20 days) we received a request for the application and plans from the immediately adjacent neighbor on N. Schulz Road, Fenwick Island, DE. Shortly before the public notice period expired the immediately adjacent neighbor provided written comments objecting to the project. After receiving the written comments, I spoke with him about our program, explained our regulations and addressed his comments. I asked him if he would like a public hearing if this could not be resolved by addressing his concerns (navigation, orientation, channelward encroachment) and he said yes. Shortly after the public notice period expired we received comments from members of the community opposing the structure for the same reasons. Again, I spoke with many of them about how our program operates and took in their concerns.

On May 27, 2020, I met on-site at 1306 N. Schulz Road, Fenwick Island, DE with the contractor/consultant, Town of Fenwick Island Officials and Council Members to discuss the regulatory authority that the DNREC- Wetlands and Subaqueous Lands Section has, as well as the configuration of the original proposed structure and any other feasible alternatives including a reconfiguration. Please note that the original proposed structure met regulations set fourth by the Department. However, just because the original design met our regulations does not necessarily mean that DNREC would not have asked for minimization based on the comments it had received from the public.

Additionally due to the comments received both during the public notice period and after the public notice period, I felt like it was in the best interest of all parties involved that I traverse by boat to check out the site conditions. On June 1, 2020 and June 3, 2020, I conducted a site visit by boat with a colleague and marked the channel markers with survey grade GPS (within 30 cm accuracy). Additionally, we took depth measurements at Mean Low Water (MLW) & Mean High Water (MHW) that were also marked using survey grade GPS equipment. Lastly, we ran a tape from the capboard of the retaining wall out to the following distances and deployed a mooring ball: a) 30', b) 37' and c) 46'. Each one of those mooring balls was also marked using survey grade GPS equipment. DNREC-WLSL captured this data because it allows us to accurately depict where the channel markers are located, setbacks from the

channel, depths of the channel and to require minimization (channelward encroachment) of the proposed structure.

While on-site June 3, 2020 Mr. Bruner who owns the lot at 1306 N. Schulz Road, Fenwick Island, DE stopped by and spoke with the contractor/consultant and myself. I explained that even though the original proposed structure met regulations set fourth by the Department, that minimization of the structure would be required because he is able to reach adequate water depths per our regulations (18 inches of water at mean low water) without having to extend out further. After speaking with Mr. Bruner and the contractor/consultant, DNREC suggested that the pier start at the retaining wall (landward of the Mean High Water Line-MHWL) and extend channelward to the toe of the rip-rap which is approximately 13 feet but only 10/11 feet are channelward of the MHWL and within DNREC-WLSL jurisdiction. This would place the end of the pier at approximately the same distance out as the adjacent neighbors bulkhead. From there the dock would extend along the toe of the rip-rap bringing it in closer to land and farther away from the navigation channel. The channelward encroachment of the structure would be reduced by approximately 20 feet thus reducing any impacts to navigation. Please note that per our regulations the structure meets the following: 1) does not exceed 20% width of the water body as measured from the Mean Low Water Line to the Mean Low Water line on the opposite bank, 2) It is not within 10 feet of a state navigational channel and please note that even though the navigation channel is marked it is not state-maintained but consideration to navigation was taken into account after receiving public comments, 3) the applicant has exhibited minimization by bringing the structure in landward to reach adequate water depths at MLW (18 inches), thus reducing channelward encroachment and reducing the risk for navigational concerns. The applicant was amendable to these changes and new plans were sent over to DNREC-WLSL on June 9, 2020. I have dispersed the revised plans to concerned citizens that I received phone calls or messages from previously.

Please note that the following reconfiguration is being proposed and will be re-advertised beginning on June 24, 2020.

- A 4 foot wide by 13 foot long pier of which only a 4 foot wide by 10 foot long section is channelward of the MHWL. The pier ends at the toe of the existing rip-rap/old wall or approximately in line with the adjacent neighbors bulkhead.
- A 6 wide by 45 foot long dock which will run parallel to the existing rip-rap revetment.
- Two boat lifts (the farthest is 12 feet out, the other at approximately 8 feet).

The reconfiguration of the structure brings it as close to the existing rip-rap revetment as possible and the total channelward encroachment from the MHWL is 28-29 feet.

At this point, the original proposed structure is considered null and void and the revised structure will be re-advertised in two statewide distributed newspaper, as well as, placed on the public notices section of the DNREC website. The public notice period will begin on June 24, 2020 for a period of 20 days.

On June 8, 2020, I received comments regarding the original design from Mr. Brandon Bortner and spoke with Mr. Bortner in great length on June 9, 2020. During our conversation, I explained our regulatory authority and also gave him a background of the project from the time it has come in until present including meeting with town officials, conducting on-site meetings with the contractor and applicant and re-configuring the proposed structure based on comments received to meet the needs of all parties involved while still maintaining our regulatory authority. Shortly after our conversation on June 9, 2020 I sent the plans over to Mr. Bortner to review. On June 10, 2020, Mr. Bortner thanked me for sending over the revised plans as well as reaching out to him via phone to discuss the proposed construction.

On June 11, 2020, I spoke with Mr. Ross (adjacent neighbor) about the revised plans. I explained where we were at with the revised plans, as well as, updated him on everything that had taken place to date. I also informed him that the revised proposed construction would again be placed on public notice as the dimensions of the structures had changed from the previous public notice and that by law DNREC-WLSL is required to do so.

Thank you,

Matthew Jones
Environmental Scientist III
DNREC-WLSL
302-739-9943

From: Teresa Tieman <townmgr@fenwickisland.org>
Sent: Thursday, June 11, 2020 1:01 PM
To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>
Subject: RE: Proposed Pier and Doc at 1306 N Schultz

Good afternoon Matt,

Please send me a summary of your review of the referenced property. It was a pleasure discussing this with you.

Best regards,

TERRY TIEMAN | Town Manager ICMA-CM
Town of Fenwick Island
800 Coastal Highway | Fenwick Island, DE 19944
p: 302.539.3011 ext. 203 f: 302.539.1305
e: townmgr@fenwickisland.org
fenwickisland.delaware.gov



**SUMMER
SAFELY**



Confidentiality Notice: The information contained in this e-mail communication and any attached documentation may be privileged, confidential or otherwise protected from disclosure and is intended only for the use of the designated recipient(s). It is not intended for transmission to, or receipt by, any unauthorized person. The use, distribution, transmittal or re-transmittal by an unintended recipient of this communication is strictly prohibited without express approval in writing or by e-mail. If you are not the intended recipient of this e-mail, please delete it from your system without copying it and notify the above sender so that the e-mail address may be corrected.

FW: Bruner - 1306 Schulz Road - Fenwick Island DE

Calder, Gayle H. (DNREC) <Gayle.Calder@delaware.gov>

Fri 5/22/2020 8:57 AM

To: Jones, Matthew R. (DNREC) <Matthew.Jones@delaware.gov>

Comments about PN

From: Pat Schuchman <Pschuchman@fenwickisland.org>**Sent:** Friday, May 22, 2020 8:51 AM**To:** Calder, Gayle H. (DNREC) <Gayle.Calder@delaware.gov>**Cc:** Merritt Burke <townmgr@fenwickisland.org>; berniefenwickisland@gmail.com**Subject:** Bruner - 1306 Schulz Road - Fenwick Island DE

Gayle

As we discussed, the permit application for James Russell Bruner, 1306 Schulz Road, to construct a 4'x28' pier, 6'x35' dock and install a boatlift with four piling has raised some serious concerns for the Town of Fenwick Island.

The location of the construction would extend approximately 46' in a northerly direction beyond the bulkhead and we are concerned this would impede boats trying to navigate the channel along the shoreline of Little Assawoman Bay.

I understand from Jordan Winterling of Winterling Marine Construction that Matthew Jones, DNREC scientist assigned to this project, has requested a meeting with Jordan to discuss some alternate options for this construction. I am requesting that I be notified when this meeting will occur so that I, along with Terry Tieman, Town Manager and Bernie Merritt, Dredging Committee Chairperson, may be in attendance.

Thank you for your help with this matter.

Patricia J. Schuchman
Building Official/Code Enforcement
Town of Fenwick Island
800 Coastal Highway
Fenwick Island, DE 19944
(302) 539-3011 – Ext. 205

VIA EMAIL Matthew.Jones@delaware.gov

7/12/20

Mr. Matthew Jones
Department of Natural Resources & Environmental Control
Wetlands & Subaqueous Lands Section
89 Kings Highway Dover, DE 19901

Re - Subaqueous Land Lease Application for 1306 N Schulz, Fenwick Island, DE (a/k/a Parcel 1-34-23.12-16.00).

Dear Mr. Jones,

I own the property located at 23 W Farmington Street, Fenwick Island, Delaware. As a boater, I use the two channels that run right where the proposed pier and dock would be located at 1306 N Schulz. Due to the low water depths, boats usually run through one channel at high speed to get on plane. The channel direction requires boats to aim directly towards, and run very close to, the proposed pier/dock. This will create a navigation hazard for both the boater and pier/dock.

The immediate area of the proposed pier/dock is also frequently used by non-motorized craft like kayaks, stand up paddle boards and sail boats. The non-motorized craft navigating around the proposed pier/dock creates a safety hazard to the non-motorized craft because the pier/dock will block visibility from the incoming and outgoing watercraft that are moving at high speed.

The proposed pier/dock structure and any boats on them will bear the brunt of the waves and storms that blow from the north and northeast, putting the boats and structure at a higher risk of storm damage.

Many of the safety and navigation concerns that the proposed pier/dock creates would be alleviated by placing the pier/dock on the west side of the property. This would leave the channels free from physical and visual obstruction from approaching high speed boats. It would also allow the land mass to afford the dock some measure of protection from storm damage. Additionally, there is deeper water on that side, which would benefit the applicant.

Given the safety issues that the proposed pier/dock structure location will have on high speed boat traffic, as well as non-motorized crafts, there should be a public hearing on the pending application to learn more about the proposed installation and to see better plans and depictions of what is proposed.

I look forward to learning more about the pending application.

John W. Verlaque
35 W Farmington Street
Fenwick Island, DE
johnwverlaque@gmail.com

(C) 732-241-9115