

In the Matter Of:

Department of Natural Resources & Environmental Control

PUBUSKY/TAYLOR SUBAQUEOUS LANDS LEASE

August 25, 2021



DEPARTMENT OF NATURAL RESOURCES & ENVIRONMENTAL CONTROL
OF THE STATE OF DELAWARE

RE: Pubusky/Taylor Subaqueous Lands)
Lease and Wetlands Permit)
Public Hearing)
Docket #2021-P-W-0016)

.

Virtual Public Hearing
Dial-In Number: 1-408-418-9388
Event Number: 179 397 0155

Wednesday, August 25, 2021
6:00 p.m.

.

BEFORE: Lisa Vest, Hearing Officer

FOR THE DIVISION: Julie Molina, DNREC

-- Transcript of Proceedings --

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1 MS. VEST: Good evening. I believe
2 that everybody is connected, so we are going
3 to go ahead and start tonight's proceedings.

4 For the benefit of those in
5 attendance tonight, I'm going to go ahead and
6 leave that screen up. And welcome.

7 Thank you for taking time out of
8 your busy schedules to join us this evening.
9 The date is Wednesday, August 25, 2021, and
10 we are here this evening to provide the
11 virtual platform for DNREC to conduct its
12 public hearing regarding the pending permit
13 of Pubusky/Taylor's Subaqueous Lands Lease
14 and Wetlands Permit.

15 For those of you who may not know
16 me, my name is Lisa Vest, and Secretary
17 Garvin has designated me to serve as hearing
18 officer for tonight's proceedings.

19 To set the stage for tonight's
20 hearing specifically with regard to some of
21 DNREC's standard hearing protocols, this
22 hearing is being conducted virtually. No
23 staff is gathered together in the same room.
24 Everyone is participating independently at

1 their own respective locations.

2 While there are no sign-in sheets
3 to document physical attendance tonight, Web
4 Ex's platform does generate a list of those
5 that are virtually present for this
6 proceeding, so the Department still has a
7 verifiable record of those who have
8 electronically joined this event. And,
9 again, I thank everyone for their interest
10 and for joining tonight.

11 At the conclusion of these
12 introductory remarks, I will be turning the
13 hearing over to Department staff, who will be
14 making a formal presentation regarding this
15 pending permit for the benefit of the hearing
16 record.

17 The applicant will also offer a
18 brief presentation and a few words following
19 the Department's presentation.

20 There is still a court reporter who
21 is virtually present. She will prepare a
22 verbatim transcript of the hearing tonight,
23 pursuant to DNREC's statutory obligation to
24 do so. And, as always, that transcript will

1 be immediately posted on the hearing webpage
2 dedicated to this pending permit matter as
3 soon as it has been received.

4 Following the conclusion of these
5 presentations, the floor will then turn to
6 receive live comment from members of the
7 public pursuant to the preregistration
8 protocols set forth on DNREC's public hearing
9 website.

10 For this evening, we have four
11 members of the public who have preregistered
12 to offer their comments regarding this
13 permit. They will be recognized in the order
14 in which they preregistered with each given
15 three minutes to offer their comment.

16 As is the case with all DNREC
17 public hearings, the Department wishes to
18 ensure that everyone is enabled to offer
19 their comments, if they wish, for inclusion
20 into the hearing record that's being
21 generated in this matter. Therefore, the
22 record will not close at the conclusion of
23 these proceedings but, rather, remain open
24 for receipt of comment for the next 15 days

1 following tonight's event.

2 The record will formally close on
3 September 9, 2021. So the public will have
4 the opportunity to offer written comment or,
5 for those that are offering live comment
6 tonight, they can supplement or offer
7 additional comment during that time period,
8 should they wish to do so.

9 I would encourage those attending
10 this proceeding to visit DNREC's hearing
11 webpage under the Administrative Law Section
12 of the website.

13 Both presentations that you will be
14 hearing tonight, along with all of the
15 exhibits and all other documentation related
16 to this matter are already posted on that
17 hearing page. And the public can gain a
18 wealth of information by reviewing the same.

19 Of course, all mechanisms
20 previously available by which to offer
21 comment remain in effect. There is
22 electronic link; there is e-mail; and, of
23 course, the United States Postal Service.

24 Additionally, please note that the

1 following protocols remain in place for all
2 DNREC public hearings:

3 Number 1: All comment received
4 must be limited solely to the subject matter
5 of tonight's hearing. All comments germane
6 to that subject matter will be incorporated
7 into the hearing record as it is being
8 generated.

9 Number 2: As previously noted, in
10 order to ensure that everyone who wishes to
11 offer comment for the Secretary's
12 consideration is accommodated, the public
13 comment period shall remain open beyond
14 tonight through September 9, 2021.

15 Number 3: There is only one
16 authentic record of this proceeding tonight,
17 and it is the official court reporter's
18 verbatim transcript.

19 Number 4: The statutory purpose of
20 tonight's hearing is to build the record with
21 regard to this pending permit. The hearing
22 record, consisting of the transcript of
23 tonight's hearing, all comments, all
24 exhibits, and eventually my Hearing Officer's

1 Report will be given to Secretary Garvin.

2 The Secretary will review the record in its
3 entirety and will ultimately issue an order
4 following that review process. The order
5 will contain his decision on the matter and
6 his reasoning therefor.

7 Number 5: It's important to note
8 that no decision whatsoever has already been
9 made by the Department concerning this
10 pending permit, nor will any decision be made
11 tonight. The public comment period will
12 remain open for an additional 15 days, as
13 previously noted, so that members of the
14 public do have that opportunity to offer
15 their comment, should they wish to do so.

16 Comments may be submitted through
17 the comment form link on the hearing page,
18 via e-mail to
19 DNRECHearingComments@delaware.gov, or, of
20 course, via the United States Postal Service
21 at the physical address for DNREC indicated
22 on the hearing page and/or all other public
23 notices previously issued in this matter.

24 It should be noted that written

1 comments to DNREC may not be submitted using
2 any type of social media platform such as
3 Twitter, Facebook, YouTube, or standard text
4 messaging.

5 Lastly, please note that whether
6 comments were received prior to tonight's
7 hearing, in realtime with those that have
8 preregistered tonight, or if they are
9 received between now and when the record
10 closes on September 9th, regardless of when
11 they come in, as long as they come in prior
12 to the records closing, all comments bear the
13 same weight, and all comments will be
14 considered by the Secretary prior to his
15 making his decision in this matter.

16 The ultimate decision regarding
17 this pending permit is made by Secretary
18 Garvin. This formal hearing tonight merely
19 acts as a mechanism to enable the Department
20 to thoroughly vet this matter to the public
21 and to let the public know the various ways
22 by which comment can be submitted for the
23 Secretary's consideration.

24 That being said, I am going to turn

1 the floor over to Department staff. Julie
2 Molina has a brief Power Point presentation
3 which will help the public kind of understand
4 how we got to tonight's hearing.

5 And, again, following that I will
6 be turning it over to the applicant for a few
7 words on their behalf. So, Julie, take it
8 away when you are ready. I will unmute you
9 now. How about that?

10 MS. MOLINA: Okay. Thank you,
11 Lisa. Can you hear me okay?

12 MS. VEST: You are good. You may
13 proceed.

14 MS. MOLINA: So I will just get
15 started. I will just introduce myself. My
16 name is Julie Molina, and I am the project
17 scientist currently assigned to this
18 application.

19 We are meeting today, of course, to
20 provide the public an opportunity to comment
21 on the Abby Pubusky and Thomas Taylor
22 application. They have applied for a private
23 residential docking facility. And they have
24 done so through the use of a Subaqueous Lands

1 Lease Permit Appli -- I'm sorry -- a
2 Subaqueous Lands Lease Application and a
3 Wetlands Permit Application.

4 The project is located in Herring
5 Creek. I have the parcel highlighted there
6 in blue, and is located at 23854 Brant Circle
7 in Lewes, Delaware.

8 I will get started with the initial
9 project that was submitted originally. The
10 wetlands impact was proposed to be a 3-foot
11 wide by 150-foot long wetland walkway. And
12 then the subaqueous impact was a 4-foot wide
13 by 34-foot-long pier, a 6-foot wide by
14 50-foot-long dock, two boatlifts with four
15 associated pilings each, and a kayak launch
16 ladder.

17 The project was placed on a 20-day
18 public notice period from February 6, 2019 to
19 February 26, 2019.

20 Three written public comments were
21 received in objection to the project.

22 Also, the comment that was received
23 by the Division of Fish and Wildlife Species
24 Conservation and Research Program indicated

1 that there were no records of species of
2 concern located at this particular project
3 site. Therefore, no time-of-year restriction
4 for construction activities would be
5 required.

6 Due to the project requiring -- due
7 to the project having objections, the
8 applicant decided to modify the project.
9 These modifications were received in October
10 of 2020.

11 In total, the modifications have a
12 reduction of 47 square feet of structure in
13 public subaqueous lands. The channel-ward
14 encroachment was reduced from 40 feet to
15 31 feet. The applicant decided to remove two
16 boatlifts. They reduced the dock length by
17 10 feet. And instead of applying for a kayak
18 launch ladder, they decided to apply for a
19 floating jet-ski platform.

20 In total at this time, the revision
21 had a wetlands impact of 3-foot wide by
22 150-foot-long wetland walkway. And the
23 structures located in subaqueous lands was a
24 4-foot-wide by 10-foot-long fixed pier, a

1 3-foot-wide by 10-foot-long gangway, a
2 6-foot-wide by 6-foot-long floating platform,
3 a 6-foot-wide by 40-foot-long floating dock,
4 and a 6-foot-wide by 10-foot-long floating
5 jet-ski platform.

6 This revised application was placed
7 on public notice again for 20 days, starting
8 from October 28, 2020, to November 17, 2020.

9 Two written comments were submitted
10 in opposition to the project.

11 Again, the review by DNREC Division
12 of Fish and Wildlife was conducted, and there
13 were no species of concern at the site.

14 At this point, since we did receive
15 several comments in objection, a public
16 hearing was scheduled for July 28, 2021.
17 Within some of those comments, there were
18 several concerns for an inadequate public
19 notice period, because the address list that
20 was used for direct mailings of the project
21 was from the original December 31, 2018
22 application, and people may have moved. And
23 so a new address list was required in
24 reflecting upon the comments that were

1 submitted.

2 So a new address list was submitted
3 on July 23, 2021 per the Sussex County tax
4 records. And the public hearing was
5 rescheduled for August 25, 2021, which is, of
6 course, today.

7 I wanted to go into a little bit of
8 the regulatory review that has been ongoing
9 throughout this permitting process.

10 As I said before, I'm representing
11 the Wetlands and Subaqueous Lands Section,
12 and our responsible authority is to conduct a
13 review based on a project being consistent
14 with regulatory requirements.

15 In this case the regulations that
16 are applicable to this project are the
17 regulations governing the use of subaqueous
18 lands and the wetland regulation.

19 Just to go over a brief history of
20 the site, I have a photo here from a
21 pre-application meeting in the summer of
22 2018. The wetlands are severely rutted due
23 to previous landowners, as well as the
24 current landowner, accessing their current

1 docking facility by use of an ATV.

2 And just to clarify, you can see
3 the damage that was being conducted to the
4 wetlands, and even on historical aerials you
5 can see it, the looped path just simply to
6 access the dock that was being created to
7 access their water access structure.

8 Now, there was a previous
9 authorization for that structure. It was
10 Subaqueous Lands Lease Number 016/99 which
11 issued the docking facility. At that time a
12 wetland walkway was not authorized, since it
13 would exceed 150 feet in length. We do not
14 issue authorizations for wetland walkways
15 over that 150-foot length.

16 And that lease that was issued in
17 1999 actually required that no equipment was
18 to be used to traverse over the wetlands. It
19 was meant to be foot traffic only. So
20 currently this is an issue at this site.

21 As part of the solution to this,
22 Wetlands and Subaqueous Lands' staff went out
23 on March 11th of 2021, and a jurisdictional
24 determination was conducted to determine the

1 extent of state-regulated wetlands on the
2 property.

3 You could see that the most
4 channel-ward end were marked in pink flags,
5 as well as the most landward end. And the
6 length of that line listed right there shows
7 where the optimal location for a
8 150-foot-long wetland walkway could be
9 proposed at this particular site.

10 And this new docking facility would
11 be proposed at that location so that they
12 could access a new docking facility without
13 having to damage any wetlands.

14 So, in total, there were some other
15 changes made to the project. So there were
16 some final modifications which included some
17 work to actually restore the wetlands. And
18 the applicant decided to relocate the
19 floating jet-ski platform to go out
20 channel-ward.

21 So, in total, I will just repeat
22 the finalized scope of the project:

23 So for the wetlands impact, the
24 applicant is proposing to restore the

1 wetlands and construct a 3-foot-wide by
2 150-foot-long wetland walkway.

3 The subaqueous impact would include
4 a 4-foot-wide by 10-foot-long fixed pier, a
5 3-foot-wide by 10-foot-long gangway, a
6 6-foot-wide by 6-foot-long floating platform,
7 a 6-foot-wide by 40-foot-long floating dock,
8 and a 6-foot-wide by 10-foot-long floating
9 jet-ski platform.

10 The wetlands restoration activities
11 include removing the existing docking
12 facility so that the ATV path would be
13 abandoned. And then the applicant is
14 proposing a phased approach to restoration.

15 You can see here a picture taken of
16 the site in the spring of 2021. You can see
17 that the wetlands have recovered in some
18 areas, but there is others, as highlighted in
19 the picture, that the elevation is a little
20 bit too high in some areas and some ponding
21 in others.

22 So the applicant is proposing to
23 regrade the ruts and regrade the higher
24 elevations, the areas of the marsh where

1 there is higher elevations to appropriate
2 elevations.

3 The existing marsh vegetation is
4 expected to naturally recede then in those
5 impacted areas.

6 And then the site is proposed to be
7 monitored for two growing seasons to document
8 revegetation.

9 And if natural recolonization does
10 not result in 85 percent coverage, then
11 wetland seedlings will be planted to expedite
12 revegetation.

13 So that's all I have. I will turn
14 it back over to you, Lisa.

15 MS. VEST: Okay, Julie. Thank you
16 for that presentation.

17 And just a little housekeeping
18 right now: There are proposed exhibits up on
19 the hearing webpage. Would you like -- would
20 the Department request that those be entered
21 into the hearing record at this time?

22 MS. MOLINA: Yes.

23 MS. VEST: Okay. And are you
24 proposing that the exhibits, as posted on the

1 hearing webpage as of the time of this
2 hearing, they are what you intend to have in
3 the record, and they are not being modified
4 or changed in any way other than what's
5 already been posted?

6 MS. MOLINA: That's correct.

7 MS. VEST: All right. Let the
8 record reflect that all DNREC exhibits
9 currently posted on the hearing webpage are
10 now hereby entered into the formal hearing
11 record.

12 And thank you, Julie. I'm going to
13 go ahead and put you back on mute right now
14 and open up Evelyn Maurmeyer's miche.
15 Evelyn, can you hear me?

16 MS. MAURMEYER: Yes, I can. Thank
17 you.

18 MS. VEST: All right. You may
19 proceed when ready.

20 MS. MAURMEYER: Thank you. Thank
21 you, Lisa, Julie. Good evening, everyone.

22 I'm Evelyn Maurmeyer, Coastal and
23 Estuarine Research, Lewes, Delaware. I'm the
24 agent for the applicants who prepared the

1 application.

2 I would like to begin my
3 presentation with some additional background
4 information. Julie, thank you for providing
5 a thorough documentation of the Department
6 and the changes that were made over time.
7 But I would like to go back even further to
8 1999.

9 As Julie mentioned, a Subaqueous
10 Lands Lease SL016/99 was issued in 1999 to
11 the previous property owner to exist -- to
12 authorize the existing docking facility.

13 For some reason, even though the
14 jurisdictional map, DNR082, in effect at that
15 time and still in effect showed that there
16 are wetlands between the upland area and the
17 waterway, there was no required nor issued
18 for a wetland walkway to access the dock.

19 In fact, in 1999, the Wetlands and
20 Subaqueous Lands Section Guidance Document
21 allowed a wetland walkway to be up to
22 300 feet in length.

23 So this site would have been
24 eligible. In fact, in one of the images that

1 Julie showed the aerial image, you will
2 notice that the property immediately adjacent
3 to the Taylors' property does have a wetland
4 walkway that exceeds 200 feet, which would
5 have been what the Taylors would need to
6 provide access to their dock.

7 In 2005 the guidelines changed,
8 limiting the length of a walkway to 150 feet.
9 So Mr. and Mrs. Taylor purchased their
10 property in April of 2018. And in the
11 absence of a walkway, they did take their ATV
12 across the wetlands to reach the dock, but
13 they did want to construct an elevated
14 walkway to minimize impacts to the wetlands.

15 Recognizing that a new walkway
16 would be in excess of 150 feet, the
17 applicants and I met with representatives of
18 the Wetlands Section on site in July of 2018
19 to discuss how they would be able to access
20 their dock.

21 Under the 2005 guideline, in excess
22 of 150 feet would not be approved. So the
23 applicants had the only option to remove the
24 existing dock, to build a new dock where it

1 could be accessed by a wetland walkway of
2 150 feet or less.

3 We submitted an application in
4 December 2018, the details of which were
5 presented by Julie. There were objections to
6 the project based among other issues with the
7 waterway and the size of the docking
8 facility.

9 Tyler Brown, at the time the
10 Program Manager of the Wetlands Section, went
11 on site in a boat and measured the width of
12 the waterway at mean low water. He
13 determined it was 160 feet across. So
14 20 percent of the mean low water width would
15 allow the applicants to extend 32 feet
16 channel-ward of the mean low water line.

17 The applicant's contractor then
18 revised the design to minimize the size of
19 the docking facility to comply with the
20 20 percent rule and to reduce the -- not only
21 the channel-ward extensiveness of the
22 structure, but also the length of the dock
23 from 50 feet to 40 feet. And that was
24 submitted in September 2020, again as

1 described by Julie.

2 We did revise the plans again in
3 October 2020 and in July 2021, further
4 minimizing impacts, again described by Julie,
5 so I won't go into the specifics.

6 But the current plan includes a
7 35-foot-long dock which provides mooring
8 facilities for the applicant's 25-foot
9 pontoon boat and a recently acquired 18-foot
10 motorboat.

11 So that the length of the structure
12 is in compliance with the Wetlands Section
13 Guidance for Docking Facilities, stating that
14 the length of the dock should be the combined
15 length of the vessels plus 5 feet between
16 vessels.

17 So 25 of the 25-foot boat pontoon
18 and the 18-foot motorboat, plus the 5-foot
19 between, would allow for a 48-foot-long dock,
20 but the applicants are only requesting a
21 40-foot dock.

22 So in conclusion, the applicants
23 purchased the property after guidelines were
24 changed so that they were not able to utilize

1 the dock that was on site.

2 They did apply for a new dock and a
3 new wetland walkway. We have worked with the
4 Wetlands Section throughout the entire
5 process for the past three years to design a
6 structure that complies with all of the
7 regulations and guidelines.

8 So I respectfully request that the
9 application by the Taylor and Pubusky family
10 be approved so that they and their young
11 family can enjoy boating, fishing, other
12 water-based recreational activities that
13 their neighbors already enjoy.

14 Thank you very much. That
15 concludes my presentation.

16 MS. VEST: Thank you, Evelyn. At
17 this point just a little housekeeping,
18 as well. The applicants did provide the
19 Department with six photographs of the
20 project site along with another document that
21 listed a number of names, and it was titled
22 the no-objection list or something of that
23 nature.

24 Those seven documents, the six

1 photographs and the list of names that have
2 no objection to the project, were accepted
3 and posted and are hereby included as being
4 incorporated into the formal record. So I
5 just wanted to make that note as well.

6 Briefly, before we move forward now
7 with -- Sasha, I see that you already took
8 over as host. The applicant wanted to say a
9 few words before we went to the comment
10 period. So, if you would, could you go ahead
11 and unmute Abby briefly?

12 ABBY PUBUSKY: Hi. Can everyone
13 hear me?

14 MS. VEST: You may begin.

15 ABBY PUBUSKY: Okay. Great. So
16 first I just want to thank everybody for
17 attending tonight and for all the work that
18 you have put into the project so far. We
19 really appreciate your help and guidance.

20 We specifically want to thank
21 Julie, Matt, and Tyler from DNREC for taking
22 the time, coming out to the property and
23 helping, you know, to guide us to make sure
24 our proposal falls within, in those

1 guidelines.

2 You know, as Evelyn and Julie said,
3 we are a young family. Tommy is here with
4 me.

5 TOM TAYLOR: Hey, everybody.

6 ABBY PUBUSKY: And we have two
7 daughters currently, Reagan, 15, and
8 Charlotte, two, and actually one on the way
9 that we just found out about.

10 You know, we have a very large
11 extended family, too, who tends to frequent
12 our house in the summer. I grew up with both
13 of my grandparents having summer homes on the
14 Indian River.

15 And I really just want my children
16 to be able to grow up with the same
17 experiences that I had. You know, and this
18 new dock and wetlands walkway will allow us
19 to do that.

20 Our setup right now, as Evelyn and
21 Julie mentioned, is less than ideal. I'm
22 sure a lot of our neighbors have seen us
23 struggle. And we are really thankful to our
24 neighbors who have allowed us to use their

1 dock for loading and unloading passengers.

2 Bob and Sue have been very kind in
3 letting us use their docking facility in the
4 meantime, you know, and we really want to
5 thank our neighbors for the support that they
6 have showed us.

7 Currently we have a 25-foot pontoon
8 boat mostly used for cruising. We have
9 acquired an 18-foot fishing boat, as Evelyn
10 had mentioned. We would like to start
11 teaching our 15-year-old daughter, as scary
12 as that is, how to boat and use the waterways
13 and mostly for fishing and crabbing. We also
14 have the jet-ski, which was mentioned too,
15 which is why we are asking for the size
16 structure that we are.

17 We also have family and friends in
18 the area. It would be nice for them to visit
19 by boat instead of having to sit on that
20 never-ending traffic on 24.

21 The wetland walkway, pier, and dock
22 design was done by Rob at Precision Marine.
23 As Evelyn mentioned, it has been through many
24 revisions, but we are always focused on

1 sustainability and accessibility.

2 So we chose the floating dock style
3 because it's less of an impact on the
4 environment. It requires significantly less
5 pilings than the traditional docks do.

6 It also is made of materials that
7 can resist the elements, and it will look
8 good in like three years to come.

9 And it can hold up to that freezing
10 and thawing in the cove that we experience
11 and that actually pops some docks out of
12 place.

13 And accessibility is a really big
14 issue for us. It's with the boat and the
15 ramp, it would make it accessible to our
16 whole family.

17 My mom suffers from knee and joint
18 issues. It's hard for her to get on and off
19 the boats with the tides that we have there.
20 And Tommy's father is also handicapped, and
21 the dock will allow him that ease of it
22 always being level with the boat.

23 My grandmother is 90. She has not
24 been able to get on our boat since we have

1 lived there, due to the navigation issues
2 getting to the dock. But her father was a
3 waterman, and she is very much looking
4 forward to taking a sunset cruise with us.

5 So in closing, you know, we really
6 are just asking to be able to access the
7 water in a safe way for our family so we can
8 all kind of enjoy what the water has to
9 offer.

10 MS. VEST: Okay. I appreciate your
11 comments. Thank you, Abby. They will, of
12 course, be incorporated into the record by
13 way of the hearing transcript.

14 Since both presentations are now
15 done, we are going to be moving to the public
16 comment portion of tonight's proceedings.

17 As I mentioned in my introductory
18 remarks, there are four members of the public
19 who have preregistered. We will take them in
20 the order in which they were signed up, no
21 particular, you know, preference or anything,
22 it's just chronological order.

23 And you will see up on the screen
24 now that it is a three-minute timer. Each

1 speaker has three minutes on which to offer
2 their comments. The court reporter will
3 transcribe them. And they will be
4 incorporated into the record.

5 And, of course, if you run out of
6 time, by all means, like I said previously,
7 you have until September 9th to offer
8 comment. So please don't hesitate if you
9 wish to supplement what you say tonight, or
10 if you think of something else two hours from
11 now. By all means, you are more than welcome
12 to submit your comments.

13 The first one that we have up is
14 Ms. Kathryn Burritt. Ms. Burritt, can you
15 hear me?

16 MS. BURRITT: Yes.

17 MS. VEST: The timer will start
18 when you start, so you may proceed when
19 ready. Ms. Burritt?

20 MS. BURRITT: Sorry. It was
21 freezing on me. Can you guys hear me okay?

22 MS. VEST: I can hear you now. I
23 was afraid you might have hit mute or
24 something.

1 MS. BURRITT: I keep getting a
2 delay. I apologize.

3 MS. VEST: You're okay. You may
4 begin.

5 MS. BURRITT: Perfect. Okay. I am
6 a neighbor. I live full time down in The
7 Cove on Herring Creek. And I just wanted to
8 show my support for Abby and Tommy's
9 reconstruction of their dock and floating
10 dock and pier.

11 I think that they have done their
12 due diligence. I know them to do nothing
13 short of what is best for everyone, including
14 the community. And that goes beyond just
15 this project, but things that I have seen
16 done in the past.

17 And I just wanted to show my
18 support for them. They are a young family.
19 I think they are doing a lot of good in our
20 neighborhood. And I think that they deserve
21 this modification.

22 And, again, I think they have done
23 their research, and they have been very
24 patient with this multiple-year process. And

1 I think it's just time to let this move
2 forward and close this out. That's it.
3 Thank you.

4 MS. VEST: All right. Thank you
5 Ms. Burritt. I appreciate that.

6 Next up on the list is Mr. Ralph
7 Short. Mr. Short, can you hear me?

8 MR. SHORT: I can hear you.

9 MS. VEST: Okay. The timer will
10 start when you do, so you may proceed when
11 ready.

12 MR. SHORT: Perfect. So I just
13 want to start off by saying I love DNREC.
14 I'm an avid fisherman, this, that, and the
15 other, and I follow all your rules and
16 regulations, and I love it.

17 But I will also speak on behalf of
18 the homeowners. If I personally was to
19 purchase a property with a boat dock,
20 especially since I own a boat, I would love
21 to be able to utilize it.

22 I mean, obviously, from the
23 previous pictures and the way they have to
24 access this now, I think it's horrible that

1 they have to destroy the wetlands. And, I
2 mean, if we have to give them a variance to
3 extend the boat dock or the access to the
4 boat dock, the pier by a little bit, I would
5 have never even bought a property on the
6 water if I wasn't allowed to utilize the
7 water access.

8 And that's pretty much what I have
9 to say. I mean, I own 12 acres in towns of
10 Delaware. And I have wetlands on that. And,
11 yeah, I understand the need for the wetlands
12 and all that stuff. But to not have access
13 to water when you buy a waterfront property,
14 I think it's appalling that it has taken this
15 long for them to even get the hearing to even
16 go to see if they can have it.

17 MS. VEST: Okay. Thank you,
18 Mr. Short. I appreciate your comments.

19 Next on the list is Donna Shaffer.
20 Ms. Shaffer, can you hear me?

21 MS. SHAFFER: Yes. Can you hear
22 me?

23 MS. VEST: I can hear you loud and
24 clear. You may proceed when ready.

1 MS. SHAFFER: Okay. Hi. So I'm
2 Donna Shaffer. And my husband, Charlie, and
3 I live at 34039, which is two houses down
4 from Tommy and Abby.

5 Honestly, we built our house in
6 1996, and we debated between building on our
7 lot and their lot. So had we built on their
8 lot, we would have a dock and walkways
9 already in existence there.

10 However, currently we have a
11 wetlands walkway, a pier, and a dock on our
12 property. And we believe that their proposed
13 walkway and dock system would be an
14 improvement to The Cove, as it would replace
15 a very old dock that they currently have.

16 And we think that they should be
17 able to access the water just like all the
18 other waterfront homeowners in our
19 neighborhood.

20 And the new walkway and pier would
21 also provide definitely a more
22 environmentally friendly way of reaching
23 their boat.

24 We don't believe that it would

1 create any navigational issues, either, in
2 The Cove. And as people who live just two
3 doors down with our own access, we can
4 testify to that.

5 MS. VEST: Okay. Is that it?

6 MS. SHAFFER: Unless you have
7 questions for me. (Laughter)

8 MS. VEST: (Laughter) No, no, no.
9 It's just you stopped so short, I wanted to
10 make sure you didn't cut off or, you know,
11 somehow disconnect. Okay. So thank you,
12 Ms. Shaffer. I appreciate your comments.
13 They will be incorporated into the record.

14 Last we have Carol and Greg
15 Stephens. I am not sure whether both of you
16 wanted to offer comment or that's just the
17 way it came in. So Carol and Greg, are you
18 both or one of you able to hear me?

19 CAROL STEPHENS: Yes.

20 GREG STEPHENS: We can hear you.
21 Can you hear us?

22 MS. VEST: I can hear you guys loud
23 and clear. It's a fantastic connection. Are
24 you both offering comment, or is it a joint

1 comment?

2 GREG STEPHENS: Well, I guess I
3 will start. I'm Greg.

4 MS. VEST: That's fine.

5 GREG STEPHENS: Okay. We live
6 across The Cove in Bay Point. And we also
7 back up to The Cove.

8 And let me first say I'm happy with
9 the wetlands restoration. I didn't realize
10 that that track was even there, but I'm happy
11 to see that improving.

12 And nor am I interested in denying
13 anyone who lives on the water the right to
14 have a dock. I think that's totally
15 reasonable.

16 My concerns, I guess, are largely
17 on the size of the dock. As I read this
18 application, first of all, unless I read it
19 wrong, the description of what is currently
20 there seems to me to be inaccurate, because
21 it claims there is an existing dock that's --
22 and I don't have the number in front of me --
23 that's like some 40 feet, 60 feet something
24 long.

1 And I mean, I went over there with
2 my kayak and kind of measured, and the
3 existing dock looks to me to be roughly 25,
4 26 feet and extending into the water 20, at
5 most. And that even counts the dock.

6 But this, the current one, is
7 described as being much, much bigger than I
8 think it really is. And I worry that maybe
9 that's an attempt to make it sound like the
10 new one really isn't much bigger than the old
11 one. And I don't think that's the case.

12 I think the new one is a radically
13 larger dock than what is currently there.

14 I'm happy to see the dock improve.
15 But I just think that it is out of
16 proportion, number one, to the application
17 saying the intent is to berth one boat.
18 That's right out of the application.

19 But now we're talking about a
20 second boat and jet-skis and all kinds of
21 other things.

22 And this is also considerably
23 larger, as far as I can tell, from any of the
24 other docks within The Cove. The Cove is not

1 huge.

2 And my, our concern is you put
3 something this big in there, that that is
4 going to impede others' ability to get in and
5 out of The Cove.

6 So, I mean, and the ability to for
7 smaller vessels like kayaks or whatever that
8 people like to go back in there and nose
9 around.

10 So that's our concern. Our concern
11 is a size issue. If they were to say we want
12 to build something that's pretty much the
13 same size as what we have, move it over so it
14 has a smaller impact, I think that would be
15 wonderful.

16 But I'm concerned that building
17 this thing that's considerably longer,
18 protrudes further, has floating jet-ski
19 platforms and all other floating platforms
20 that I honestly didn't quite even follow,
21 it's just you are replacing a small or a
22 reasonable-sized dock with something that's
23 really, really big. That's my concern.

24 MS. VEST: Okay. Okay. Thank you,

1 Mr. Stephens. I appreciate your comment. It
2 will be incorporated into the record.

3 Ms. Stephens, did you have anything
4 that you wanted to offer comment while you
5 are here? You will be the final commenter.

6 CAROL STEPHENS: No. We were just
7 concerned about the impact on the wildlife
8 as well as the kayakers, because there is
9 really an active kayak community.

10 MS. VEST: Okay.

11 CAROL STEPHENS: And it's a great
12 way for us to have a healthy lifestyle. If
13 everyone would proceed, you know, take this
14 role model and, you know, expand the size of
15 their dock so far, it would be really tough
16 for us to be able to go back there.

17 So we don't want to be excluded.
18 You know, maybe we don't have all kinds of
19 boats, but we do have kayaks, and we like to
20 use them. Thank you.

21 MS. VEST: Thank you. And thank
22 all of you guys that preregistered and
23 offered your comment live for the benefit of
24 not only the record but for all of us in

1 attendance tonight. It's greatly
2 appreciated. DNREC appreciates the public
3 participation.

4 With that being said, we are now
5 going to bring the proceedings tonight to a
6 close.

7 Again, as a reminder, you can go
8 online to the DNREC Public Hearing Section.
9 All you have to do is find DNREC on the web
10 and search for the Administrative Law folder
11 or tab that you will see at the top.

12 And when you click on the
13 Administrative Law Section, it will take you
14 to all of our hearings, not just this one.
15 And since this is the most current, it will
16 be the first one on the list. We do not take
17 hearings off that list. All of them are up
18 there.

19 You can review all the documents,
20 download and print them yourself if you want
21 to.

22 But there is a vast amount of
23 information available. And, again, I would
24 encourage everybody to check that out.

1 Again, the record will remain open
2 up until September 9th, which is 15 full days
3 from the date of tonight's hearing. And if
4 you wish to comment, you may certainly do so.

5 It does not matter how they come
6 in, like I said before, by e-mail, by the
7 Hearing Comments link, or by standard
8 physical U.S. Postal Service. One is not
9 preferable to the other. We are just trying
10 to make it as convenient as possible for the
11 public to offer their thoughts.

12 No matter how it comes in, as long
13 as it is received on or before September 9th,
14 it will be incorporated into the hearing
15 record.

16 I do want to thank everybody for
17 attending. Again, the participation of the
18 public is vital to us in these kind of
19 matters. So thank you very much for taking
20 the time. This hearing is adjourned.

21 (Concluded at 6:38 p.m.)

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CERTIFICATE

I, Lorena J. Hartnett, a Notary Public and Registered Professional Reporter, do hereby certify that the foregoing is an accurate and complete transcription of the proceeding held at the time and place stated herein, and that the said proceeding was recorded by me and then reduced to typewriting under my direction, and constitutes a true record of the testimony given by said witnesses.

I further certify that I am not a relative, employee, or attorney of any of the parties or a relative or employee of either counsel, and that I am in no way interested directly or indirectly in this action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal of office on this 31st day of August 2021.



Lorena J. Hartnett
Registered Professional Reporter

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