

**From:** [Calder, Gayle H. \(DNREC\)](#)  
**To:** [Esposito, Katie \(DNREC\)](#); [Geatz, George W. \(DNREC\)](#); [Jones, Matthew R. \(DNREC\)](#); [Messick, Zachary M \(DNREC\)](#); [Molina, Julie \(DNREC\)](#)  
**Cc:** [Brown, Tyler \(DNREC\)](#); [Smailier, Steven M. \(DNREC\)](#)  
**Subject:** FW: Public Notice # 3  
**Date:** Friday, February 15, 2019 3:37:54 PM

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**From:** Stetzar, Samantha (DNREC) <Samantha.Stetzar@delaware.gov>  
**Sent:** Friday, February 15, 2019 3:36 PM  
**To:** Calder, Gayle H. (DNREC) <Gayle.Calder@delaware.gov>  
**Subject:** Public Notice # 3

Hello Gayle,

Here's the comments for PN#3 highlighted below:

**Subaqueous Lands Lease Renewal**

Martin and Jacqueline Moody (3-35-4.18-18.01) -To maintain a 5 by 62 foot long dock, (2) 3 by 20 foot long finger piers, and 6 mooring pilings located in the Lewes and Rehoboth Canal across from 588 Pilottown Road, Lewes, Sussex County, DE

**No comments-This is maintenance of existing structures and no new impacts are being proposed**

**Subaqueous Lands Lease and Wetlands Application**

Abby Pubusky (234-18.00-257.00)-To construct a 3 by 150 foot long wetland walkway in State-regulated wetlands and construct a 4 by 34 foot long pier, a 6 by 50 foot long dock, two (2) boat lifts with 4 associated pilings each and a kayak launch ladder in Herring Creek located at 23854 Brant Circle, The Cove, Lewes, Sussex County, DE

**No fisheries concerns pertaining to this project at this time.**

If you have any questions or need more information, please let me know.

Many Thanks,  
Samantha Stetzar

Julie

MEMORANDUM

PROJECT NOTICE NO. 3

DATE: February 6, 2019

TO:

- SECRETARY - DNREC
- DIRECTOR - Division of Energy and Climate
- ADMINISTRATOR - Coastal Programs
- DIRECTOR - Division of Air Quality
- DIRECTOR - Division of Waste Management
- DIRECTOR - Division of Parks & Recreation
- DIRECTOR - Division of Fish & Wildlife
- MANAGERS - Fisheries, Mosquito Control, Wildlife
- DIRECTOR - Division of Watershed Stewardship
- DIRECTOR - Division of Water
- MANAGER - Groundwater Discharges Section
- MANAGER - Surfacewater Discharges

GEORGETOWN OFFICE - Division of Water  
 CHIEF - Public Affairs, DNREC  
 CHIEF - Planning  
 DELAWARE GEOLOGICAL SURVEY  
 NEW CASTLE, SUSSEX & KENT COUNTY PLANNING OFFICES  
 DEPARTMENT OF HEALTH AND SOCIAL SERVICES  
 GOVERNOR'S COUNCIL ON ENVIRONMENTAL CONTROL  
 COUNCIL ON HISTORICAL & CULTURAL AFFAIRS, ARCHAEOLOGICAL OFFICE  
 ENVIRONMENTAL PROTECTION AGENCY  
 U. S. FISH & WILDLIFE SERVICE  
 U. S. ARMY CORPS OF ENGINEERS  
 NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION  
 ADJACENT PROPERTY OWNER  
 WETLANDS MAILING LIST

FROM: WETLANDS AND SUBAQUEOUS LANDS SECTION - Telephone (302) 739-9943

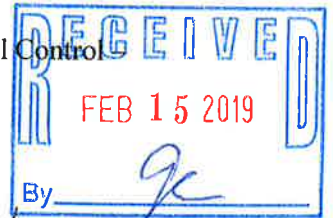
SUBJECT: PENDING APPLICATIONS FOR SUBAQUEOUS AND/OR WETLANDS PROJECTS

Attached is a copy of a notice which appears in the News Journal and The Delaware State News on Wednesday February 6, 2019. If you have any comments, please return this memo to this office by February 26, 2019.

**PUBUSKY**

PROJECT NOTICE NO. 3

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



Commenting on: Pubusky  
 Signed: [Signature]  
 Date Notice Received: 2/3/19  
 Div./Address: Lot #97 Bay Pointe  
 No comments: \_\_\_\_\_  
 Phone: \_\_\_\_\_

Returned via mail 2/13

My comments are as follows *A walkway to enjoy nature seems reasonable. However, a 34 foot long pier, 50 foot dock, 2 boat lifts, etc. seems excessive and detrimental to wildlife in the wetlands area. If these are state regulated wetlands they need to be protected as such. Thank you for the opportunity to respond.*

MEMORANDUM

PROJECT NOTICE NO. 3  
DATE: February 6, 2019

TO:

- SECRETARY - DNREC
- DIRECTOR - Division of Energy and Climate
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GEORGETOWN OFFICE - Division of Water  
 CHIEF - Public Affairs, DNREC  
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 NATIONAL OCEANIC & ATMOSPHERIC ADMINISTRATION  
 ADJACENT PROPERTY OWNER  
 WETLANDS MAILING LIST

FROM: WETLANDS AND SUBAQUEOUS LANDS SECTION - Telephone (302) 739-9943

SUBJECT: PENDING APPLICATIONS FOR SUBAQUEOUS AND/OR WETLANDS PROJECTS

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PUBUSKY

PROJECT NOTICE NO. 3

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

Commenting on: 23854 Brant Circle, The Cove, Lewes - Subaqueous Lands Lease and

Signed: John M. Gikolans

Date Notice Received: 2/16/19

Div./Address: 33685 Baylis Drive, Lewes, DE

No comments: \_\_\_\_\_

Phone: 717-951-1124

My comments are as follows : See Attached Letter

**RECEIVED**  
2/22/19



**Subaqueous Lands Lease Renewal**

Martin and Jacqueline Moody-To maintain a 5 by 62 foot long dock, (2) 3 by 20 foot long finger piers, and 6 mooring pilings located in the Lewes and Rehoboth Canal across from 588 Pilottown Road, Lewes, Sussex County, DE

**Subaqueous Lands Lease and Wetlands Application**

Abby Pubusky-To construct a 3 by 150 foot long wetland walkway in State-regulated wetlands and construct a 4 by 34 foot long pier, a 6 by 50 foot long dock, two (2) boat lifts with 4 associated pilings each and a kayak launch ladder in Herring Creek located at 23854 Brant Circle, The Cove, Lewes, Sussex County, DE

**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 February 26, 2019.

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. 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, February 6, 2019  
NEWS JOURNAL - Wednesday, February 26, 2019

BILLING INFORMATION: 400403  
DNREC, DWR, Gayle Calder  
89 KINGS HIGHWAY, DOVER, DE 19901  
302-739-9943

RECEIVED  
2/22/19

John M. Nikolaus  
740 Kames Hill Road  
Columbia, PA 17512

February 22, 2019

Julie R. Molina, Environmental Scientist  
Wetlands and Subaqueous Lands Section  
Department of Natural Resources and Environmental Control

RE: Proposed Wetland Walkway, Pier and Dock located at 23854 Brandt Circle, Lewes, DE

Dear Ms. Molina,

In follow up to our recent discussions, I would like to formally comment on the proposal as referenced above. By way of background, my wife, Mary Nikolaus, and I own 33685 Baylis Drive, Lewes, DE, the property located directly across the cove from the proposed construction. As a general observation, we can attest to the fact that the property owners of 23854 Brandt Circle are challenged with accessing their existing dock depending on weather and tidal conditions. We are supportive of the applicant's proposed wetland 150' x 3' walkway as we believe that it will provide a safe means of accessing the proposed pier and dock while serving to preserve vegetation by eliminating ATV and foot traffic to the pier and dock.

As owners of a property located in close proximity to the proposed project, my wife and I would like to express our objection to the size of the proposed pier and dock. Besides navigating through the tidal waters in the cove ourselves, we are aware of other property owners upstream who use the waterway. In addition, we have observed others who navigate their boats and jet skis in the cove.

In review of the Wetlands and Subaqueous Lands Section (WSLS) Docking Facilities Guidance Document (as amended July, 2005), the following statements appear to apply to the proposed construction:

- 1) WSLS is concerned about overly large structures due to increased likelihood of creating navigational problems.
- 2) Of equal concern is the issue of placing private docks and piers in public subaqueous lands.
- 3) Structures should always be the minimum size necessary to accomplish the applicant's objectives.

The application calls for a 34' x 4' pier and a 6' x 50' dock. Thus, the proposed structure encroaches channelward from the mean low water line a total of 40'. WSLS Regulations governing the use of subaqueous lands state that structures, *including preemptive berthing area for vessels*, should not encroach from the mean low water line more than 10% of the width of the waterbody. Up to 20%

RECEIVED  
2/22/19



encroachment may be allowed to obtain appropriate water depths of vessels to be berthed at the facility subject to a detailed mean low water site bathymetry being included in the application. However, a 20% encroachment will not be approved if the structures have not been minimized as described above. (If a detailed mean low water site bathymetry was included in the application, we could not identify it in the materials that were sent to us. Without this detailed data, how can the 20% exception be granted?)

Using a taunt string line, we were able to measure the width of the water body, at the approximate location of the proposed structure. The width of the waterbody at that point is 160', not 200' as indicated on the application. According to the regulations, using the 10% rule, the structures, *including the preemptive berthing area for vessels*, should not encroach channelward from the mean low water line more than 16' if it is built where the waterbody is 160' in width. Based on the regulations, it appears that the width of the boat lift, or 13', must be included in the calculations. However, if it is determined that 20% encroachment is allowed to obtain appropriate water depths, the structures, *including the preemptive berthing area for vessels*, should not encroach channelward from the mean low water line more than 32' if it is built where the waterbody is 160' in width. The application proposes that two boat lifts are to be installed on the inside of the dock. It should be noted that there would be nothing to prevent boat docking to occur on the channelward side of the dock. Therefore, at the very least, the width of the vessel should be included in the calculations. If it is determined that the boat lift must be located on the channelward side of the dock, it appears that the width of the boat lift, or 13', must be included in the calculations. And so if it is determined that 20% encroachment is permitted, then the pier and dock should be permitted to encroach 19' channelward from the mean low water line, leaving 13' in width for the boat lift on the channelward side of the dock.

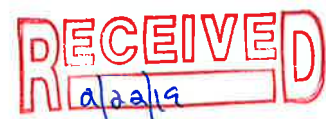
We also would like to object to the width of the proposed dock. As previously mentioned, WSL regulations state that all structures should be the minimum size necessary to achieve their intended purpose. The application indicates that the vessel to be berthed at the docking facility is a 25' pontoon with a copy of the boat registration attached to the application. However, the application calls for a 50' wide dock and two boat lifts be installed to accommodate two vessels. Given the fact that one boat registration was provided and one boat was listed on the application, it seems that a 25' wide dock would serve as the minimum size necessary to achieve the intended purpose. Given the relatively small cove, a 50' wide dock would stand out and not conform to the size of other docks in the immediate area.

To conclude, my wife and I are supportive of the application to construct an elevated walkway, pier and dock but with the limitations as outlined above and in conformance with WSL Regulations. If any form of new pier and dock are permitted, the demolition of the existing pier and dock should be a prerequisite as you stated during our phone conversation.

I look forward to discussing this matter with you upon your review of this letter. Thank you in advance for evaluating our concerns.

Sincerely,

  
John M. Nikolaus



## Molina, Julie (DNREC)

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**From:** RALPH BURRIS <aburris08@comcast.net>  
**Sent:** Friday, February 22, 2019 1:20 PM  
**To:** Molina, Julie (DNREC)  
**Subject:** 23854 Brant Circle Lewes DE dock proposal

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I am writing in regards to the proposal on the above property application for a walkway pier and dock on Herring Creek. We have been in Florida since January 24, 2019 and my neighbors have notified me about this proposal I called your office and was told you were off till Tuesday and there was a 20 day response to this application if you could call me regarding this matter.. My mailed has been stopped so therefore I have not received any notification. There is not enough room in that gut of water that can handle this MARINA thats what its equivalent to. There are other boat owners that need access to there docks which would hinder their in and out of the waterway.

Applicate Name Abby Pubusky 211 S Union St Kennett Square Pa 19348

My address is 33689 Baylis Dr Lewes DE 33689

Owners Ralph and Agnes Burris

Cell # 302 983 8004

alternate address 565 Salem Church Rd Newark De 19702

not sure where this letter of notification would of been mailed but it was not received I am grateful to my neighbors to contact me.

**Molina, Julie (DNREC)**

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**From:** Cecelia Vavala <cissyvavala@gmail.com>  
**Sent:** Tuesday, February 26, 2019 2:23 PM  
**To:** Molina, Julie (DNREC)  
**Subject:** 23854 Brant Circle Lewes DE Dock Proposal

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

I am using a relatives email account to notify DNREC of our disapproval of the proposed 34 ft x 4ft pier and dock.

I sent a previous email to you last friday expressisng our concerns . We are out of town and our neighbors are very informative about this project.

Best Regards  
Agnes Burris  
33689 Baylis Dr  
Lewes DE 19958