



Subaqueous Lands Lease Application

Brett Bagenstose (334-18.00-18.00)-To install 4 free standing mooring pilings and a 5 by 20 foot long floating dock in Love Creek at 33792 Love Creek Pines Lane, Millsboro, Sussex County, DE

DFW Comments:

A review of our database indicates that the following state rare or federally listed plants, animals or natural communities occur at or adjacent to the project site:

Scientific Name	Common Name	Taxon	State Rank	State Status	SGCN Tier	Federal Status
<i>Apeltes quadracus</i>	Fourspine Stickleback	Fish	S2		Tier 2	

State Rank: **S1** – Extremely rare within the state (typically 5 or fewer occurrences); **S2** – Very rare within the state (6 to 20 occurrences); **S3** – rare to uncommon in Delaware; **B** – Breeding; **N** – Nonbreeding; **S4** – Apparently secure, at fairly low risk of extinction or extirpation due to an extensive range and/or many populations or occurrences, but with possible cause for some concern as a result of local recent declines, threats, or other factors; **S5** – Demonstrably secure, at very low risk of extinction or extirpation due to a very extensive range, abundant populations or occurrences, or little to no concern from declines or threats.; **SX** – Extirpated or presumed extirpated from the state. All historical locations and/or potential habitat have been surveyed; **SH** – Historically known, but not verified for an extended period (usually 15+ years); there are expectations that the species may be rediscovered; **SE** – Non-native in the state (introduced through human influence); not a part of the native flora or fauna; **SNR** – Not yet ranked in Delaware, **SN** – Occurrences in DE of limited conservation value, **of concern due to a restricted range; **SU** – Status uncertain within the state. Usually an uncommon species which is believed to be of conservation concern, but there is inadequate data to determine the degree of rarity.

State Status: **E** – Endangered, i.e. designated by the Delaware Division of Fish and Wildlife as seriously threatened with extinction in the state pursuant to State of Delaware Code (7 Del. §601 *et seq.*) and implementing regulation (Title 7, 3900, 16.0 Endangered Species) ; **NA** – plants are not included in Title 7.

SGCN Tiers: **Tier 1** – Species of Greatest Conservation Need (SGCN) that are most in need of conservation action in order to sustain or restore their populations. They are the focus of the Delaware Wildlife Action Plan (DEWAP), which is based on analyzing threats to their populations and habitats, and on developing conservation actions to eliminate, minimize, or compensate for these threats. **Tier 2** – SGCN that are also in need of conservation action, although not with the urgency of Tier 1 species. Their distribution across the landscape will help determine where DEWAP conservation actions will be implemented on the ground. **Tier 3** – These species are for the most part still relatively common in Delaware, but are listed as SGCN for various reasons, including documented population declines, high responsibility of the Northeast region for the global population, or continued need for monitoring and/or management. This tier also includes non-breeding species that are uncommon in Delaware. **NA** – plants are not addressed in DEWAP.

Federal Status: **E** – Endangered, i.e. designated by the U.S. Fish and Wildlife Service as being in danger of extinction throughout its range; **T** – Threatened, i.e. designated by USFWS as being likely to become endangered in the foreseeable future throughout all or a significant portion of its range; **C** – candidate - Taxa for which the U.S. Fish and Wildlife Service has on file enough substantial information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species. NOAA Managed Candidate: **SC** – Species of Concern - species about which NOAA's National Marine Fisheries Service (NMFS) has some concerns regarding status and threats, but for which insufficient information is available to indicate a need to list the species under the ESA.

Fisheries

Sampling conducted by our Division’s fisheries staff revealed that Love Creek supports many juvenile migratory fish and is thus considered an important nursery area in the Inland Bays. Several species of particular commercial and recreational importance utilize the creek and could be impacted by this project. We request that any in water work **not** occur from **March 1st to September 30th** to allow time for young of the year to grow

large enough to be less vulnerable to habitat-altering activities and then migrate out of the system. This window should minimize the number of young of the year flounder impacted by the project. In addition, it is possible that Striped Bass (*Morone saxatilis*) spawn in upper Love Creek due to the number of young of the year (YOY) caught during sampling efforts.

Love Creek is used by large numbers of American Eel (*Anguilla rostrata*). We request that in-stream work not take place from **March 1st to May 15th** to allow upstream passage of elvers (young eels).

Fourspine stickleback, a state-rare fish species, depends on shallow, calm, vegetated waters for nest building and spawning. If aquatic vegetation occurs in the project area, in-water work activities should not take place during **April 1 to May 30** when spawning activity typically occurs. Sedimentation should be avoided during project activities, and permanent impacts to aquatic vegetation should be avoided to maintain habitat that supports this species.

Subaqueous Lands Lease and Wetlands Application

Abby Pubusky (Tax Parcel# 234-18.00-257.00) To construct a 3 by 150 foot long wetland walkway in State-regulated wetlands and construct a 4 foot wide expanding to 6 by 10 foot long pier, a 6 by 10 foot long floating jet ski platform, a 3 by 10 foot long gangway, a 6 by 6 foot long floating pier and a 6 by 40 foot long floating dock in Herring Creek located at 23854 Brant Circle, The Cove, Lewes, Sussex County, DE

DFW Comments: 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.

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 November 17, 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 October 28, 2020**

NEWS JOURNAL - Wednesday October 28, 2020
BILLING INFORMATION: 400403
DNREC, DWR, Gayle Calder
89 KINGS HIGHWAY, DOVER, DE 19901

Fwd: 23854 Brant Circle Lewes DE Abby Pubusky

RALPH BURRIS <aburris08@comcast.net>

Sat 11/14/2020 11:23 AM

To: Molina, Julie (DNREC) <Julie.Molina@delaware.gov>

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

From: RALPH BURRIS <aburris08@comcast.net>

To: "Julie.molina@delaware.gov" <Julie.molina@delaware.gov>

Date: 11/14/2020 10:51 AM

Subject: 23854 Brant Circle Lewes DE Abby Pubusky

November 13 2020

Attn: Julie Molina

I am writing in regards to the proposal of Abby Pubusky, with all the property shore line allowing a 150 ft walkway over the wetlands should be reduced. The existing wetland were destroyed on the property and I feel it necessary for the wetlands to grow back undisturbed, hopefully they are planning a different location for a walkway to the shoreline.

I also feel that the proposed dock which results in a Mini Marina is a little much for the gut of the waterway. Reducing the size of the dock would help with the boat owners beyond their property access through the waterway without problems. There are many days that the boats sit on mud especially when the winds are not favorable. In addition taking in consideration with the low tide I understand the guidelines only allow 20% of the waterway. Being a property owner on the water its certainly necessary to enjoy the waterway without trying to take over the waterway

Best Regards

Agnes Burris

Please email me upon receipt of this email

Re: Pubusky Revised Application

jnikolaus123@embarqmail.com <jnikolaus123@embarqmail.com>

Tue 11/17/2020 2:21 PM

To: Molina, Julie (DNREC) <Julie.Molina@delaware.gov>

Ms. Molina,

Thank you for the opportunity to comment on the proposed project.

We continue to be supportive of the applicant's plan to construct a 150'x3' wetland walkway.

We object to the size of the proposed docking structure and the encroachment of the structure, including the preemptive berthing area for vessels, beyond 20% of the 160' mean low water line.

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 proposed structure encroaches channelward from the mean low water line a total of 31'. 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 water body. Up to 20% encroachment may be allowed to obtain appropriate water depths of vessels to be berthed at the facility subject to a 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.

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 water body is 160' in width. It should be noted that it would be expected that any vessels would dock on the channelward side of the structure. Therefore, the width of the vessel referenced in the application should be included in the calculations. And so if it is determined that 20% encroachment is permitted, then the pier, dock and vessel should not encroach channelward more than 32'.

We also would like to object to the width of the proposed dock. As previously mentioned, WSLS 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. Thus it seems that a 40' wide dock extends beyond what is needed to achieve the intended purpose. Given the relatively small cove, a 40' wide dock would stand out and not conform to the size of the other docks in the immediate area.

Finally, 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 when we spoke last year.

We are supportive of the applicant's desire to construct an elevated walkway, pier and dock but within the limitations as outlined above and in conformance with WSLS Regulations.

We look forward to hearing further updates from you.

Sincerely,

John and Mary Nikolaus
33685 Baylis Drive
Lewes, DE
717-951-1124

On Nov 17, 2020, at 1:06 PM, Jnikolaus123@embarqmail.com wrote:

Sent from my iPhone

Begin forwarded message:

From: "Molina, Julie (DNREC)" <Julie.Molina@delaware.gov>

Date: November 4, 2020 at 1:23:30 PM EST

To: Jnikolaus123@embarqmail.com
Subject: Pubusky Revised Application

Hello,

You previously commented about an application for a wetland walkway, pier and dock located at 23854 Brant Circle, Lewes, DE by Abby Pubusky.

The applicant has revised their project and the new application is currently on public notice. I attached their application for review and comment which includes the initial application at the end of the document.

If you would like to comment on the attached project, comments are due by November 17th which can be emailed directly to me.

JULIE R. MOLINA
ENVIRONMENTAL SCIENTIST III
DNREC DIVISION OF WATER | WETLANDS AND SUBAQUEOUS LANDS SECTION
89 KINGS HIGHWAY DOVER, DE 19901 | P: (302) 739-9943

PLEASE CONSIDER THE ENVIRONMENT BEFORE PRINTING THIS MESSAGE.

<New Application.pdf>