

ENVIRONMENTAL APPEALS BOARD

APPEAL 2020-06

CHRONOLOGY

Environmental Appeals Board

APPEAL 2020-06

INDEX

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EXHIBIT 1



COASTAL & ESTUARINE RESEARCH, INC.

Marine Studies Complex
P.O. Box 674
Lewes, Delaware 19958
302-645-9610

April 16, 2019

Tyler Brown
Wetlands and Subaqueous Lands Section, DNREC
89 Kings Highway
Dover, DE 19901



Dear Tyler:

Enclosed are three copies of the DNREC Wetlands and Subaqueous Lands Section Basic Application Form and Appendix A (Boat Docking Facilities, 1-4 slips) submitted on behalf of Marshall T. Jenney (applicant) for Supplemental Approval of SL-065/05, SU-376/06, and SU-022/13 for addition of a 12' x 4' gangway and a 6' x 25' floating dock to the existing structure in Rehoboth Bay at 318 Salisbury Street, Seabreeze, Dewey Beach, Beach, Sussex County, Delaware (Tax Map Parcel #3-34-20.17-14.00). Also enclosed are two checks payable to the State of Delaware, one for \$150.00 for the Supplemental Approval fee and one for \$85.00 for the public notice fee.

Please feel free to contact me if you have any questions, or require additional information.

Sincerely,

Evelyn M. Maurmeyer, Ph. D.

Enclosures

cc: Marshall T. Jenney, applicant

Section 1: Applicant Identification

1. Applicant's Name: Marshall T. Jenney Telephone #: (302) 540-9900
 Mailing Address: 318 Salisbury Street Fax #: _____
Rehoboth Beach DE 19971 E-mail: mjenney@comcast.net
2. Consultant's Name: Evelyn Maurmeyer Company Name: CER, Inc.
 Mailing Address: PO Box 674 Telephone #: (302) 645-9610
Lewes, DE 19958 Fax #: (302) 645-4332
 E-mail: maurmeyer@udel.edu
3. Contractor's Name: Clarke Droney Company Name: Droney Marine Construction
 Mailing Address: 31322 Railway Road Telephone #: (302) 537-2305
Millville DE 19967 Fax #: (302) 537-2553
 E-mail: captdroney@aol.com

Section 2: Project Description

4. Check those that apply:
 New Project/addition to existing project? Repair/Replace existing structure? (If checked, must answer #16)

5. Project Purpose (attach additional sheets as necessary):

Applicant seeks Supplemental Approval to SL-065/05, SU-376/06, and SU-022/13 to add a 12' x 4' gangway and a 6' x 25' floating dock to existing structure.

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 APR 22 2019
 By _____

6. Check each Appendix that is enclosed with this application:

<input checked="" type="checkbox"/> A. Boat Docking Facilities	<input type="checkbox"/> G. Bulkheads	<input type="checkbox"/> N. Preliminary Marina Checklist
<input type="checkbox"/> B. Boat Ramps	<input type="checkbox"/> H. Fill	<input type="checkbox"/> O. Marinas
<input type="checkbox"/> C. Road Crossings	<input type="checkbox"/> I. Rip-Rap Sills and Revetments	<input type="checkbox"/> P. Stormwater Management
<input type="checkbox"/> D. Channel Modifications/Dams	<input type="checkbox"/> J. Vegetative Stabilization	<input type="checkbox"/> Q. Ponds and Impoundments
<input type="checkbox"/> E. Utility Crossings	<input type="checkbox"/> K. Jetties, Groins, Breakwaters	<input type="checkbox"/> R. Maintenance Dredging
<input type="checkbox"/> F. Intake or Outfall Structures	<input type="checkbox"/> M. Activities in State Wetlands	<input type="checkbox"/> S. New Dredging

Section 3: Project Location

7. Project Site Address: 318 Salisbury Street County: N.C. Kent Sussex
Dewey Beach DE 19971 Site owner name (if different from applicant): same
 Address of site owner: "

8. Driving Directions: See Figures 1, 2, and 3 for maps and directions.

(Attach a vicinity map identifying road names and the project location)

9. Tax Parcel ID Number: #3-34-20.17-14.00 Subdivision Name: Seabreeze

WLSL Use Only:		Permit #s: _____							
Type	SP <input type="checkbox"/>	SL <input type="checkbox"/>	SU <input type="checkbox"/>	WE <input type="checkbox"/>	WQ <input type="checkbox"/>	LA <input type="checkbox"/>	SA <input type="checkbox"/>	MP <input type="checkbox"/>	WA <input type="checkbox"/>
Corps Permit:	SPGP 18 <input type="checkbox"/> 20 <input type="checkbox"/>		Nationwide Permit #: _____		Individual Permit #: _____				
Received Date:	_____		Project Scientist: _____						
Fee Received?	Yes <input type="checkbox"/>	No <input type="checkbox"/>	Amt: \$ _____	Receipt #: _____					
Public Notice #:	_____		Public Notice Dates: ON _____		OFF _____				

Section 3: Project Location (Continued)

10. Name of waterbody at Project Location: Rehoboth Bay waterbody is a tributary to: Atlantic Ocean

11. Is the waterbody: Tidal Non-tidal Waterbody width at mean low or ordinary high water > 2 miles

12. Is the project: On public subaqueous lands? On private subaqueous lands?*
 In State-regulated wetlands? In Federally-regulated wetlands?

*If the project is on private subaqueous lands, provide the name of the subaqueous lands owner:

(Written permission from the private subaqueous lands owner must be included with this application)

13. Present Zoning: Agricultural Residential Commercial Industrial Other

Section 4: Miscellaneous

14. A. List the names and complete mailing addresses of the immediately adjoining property owners on all sides of the project (attach additional sheets as necessary):

Parcel 13: Regina Makani, 88 Riverview Dr., Petersburg WV 26847

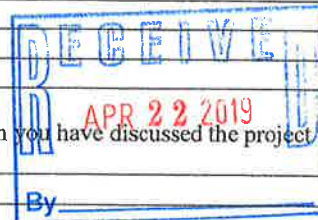
Parcel 15: William & Lois Klemkowski, 316 Salisbury St., Rehoboth Beach DE
19971

B. For wetlands and marina projects, list the names and complete mailing addresses of property owners within a 1,000 foot radius of the project (attach additional sheets as necessary):

n/a

15. Provide the names of DNREC and/or Army Corps of Engineers representatives whom you have discussed the project with:

None



A. Have you had a State Jurisdictional Determination performed on the property?

Yes No

B. Has the project been reviewed in a monthly Joint Permit Processing Meeting?

Yes No

*If yes, what was the date of the meeting? _____

16. Are there existing structures or fill at the project site in subaqueous lands?

Yes No

*If yes, provide the permit and/or lease number(s):

SL-065/05; SU-376/06; SU-022/13

*If no, were structures and/or fill in place prior to 1969?

Yes No

17/ Have you applied for or obtained a Federal permit from the Army Corps of Engineers?

No Pending Issued Denied Date: _____

Type of Permit: SPGP-20 eligibility Federal Permit or ID #: _____

18/ Have you applied for permits from other Sections within DNREC?

No Pending Issued Denied Date: _____ Permit or ID #: _____

Type of permit (circle all that apply): Septic Well NPDES Storm Water

Other: _____

Section 5: Signature Page

19. Agent Authorization:

If you choose to complete this section, all future correspondence to the Department may be signed by the duly authorized agent. In addition, the agent will become the primary point of contact for all correspondence from the Department.

I do not wish to authorize an agent to act on my behalf

I wish to authorize an agent as indicated below

I, Marshall T. Jenney (Name of Applicant), hereby designate and authorize Evelyn Maurmeyer, CER, Inc. (Name of Agent) to act on my behalf in the processing of this application and to furnish any additional information requested by the Department.

Authorized Agent's Name: Evelyn Maurmeyer Telephone #: (302) 645-9610
Mailing Address: CER, Inc. Fax #: (302) 645-4332
PO Box 674 E-mail: maurmeyer@udel.edu
Lower DE 19958

20. Agent's Signature:

I hereby certify that the information on this form and on the attached plans are true and accurate to the best of my knowledge. I further understand that the Department may request information in addition to that set forth herein if deemed necessary to appropriately consider this application.

[Signature]
Agent's Signature

4/16/2019
Date

21. Applicant's Signature:

I hereby certify that the information on this form and on the attached plans are true and accurate to the best of my knowledge and that I am required to inform the Department of any changes or updates to the information provided in this application. I further understand that the Department may request information in addition to that set forth herein if deemed necessary to appropriately consider this application. I grant permission to authorized Department representatives to enter upon the premises for inspection purposes during working hours.

Marshall T. Jenney
Applicant's Signature

4/10/2019
Date

Marshall T. Jenney
Print Name



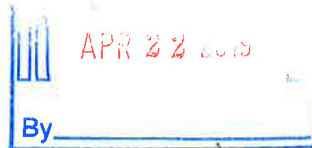
22. Contractor's Signature:

I hereby certify that the information on this form and on the attached plans are true and accurate to the best of my knowledge, and that I am required to inform the Department of any changes or updates to the information provided in this application. I further understand that the Department may request information in addition to that set forth herein if deemed necessary to appropriately consider this application.

Clarke Droney, Droney Marine Construction
Contractor's Name

Print Name

Last Revised on March 28, 2017



BOAT DOCKING FACILITIES

Any boat docking facility for more than four (4) vessels is considered a marina facility (see definitions and explanations section) and requires the applicant to complete Appendices N and O, and make application to the U. S. Army Corps of Engineers for approval.

Please make sure answers to all of the questions in this appendix correspond with information on the application drawings.

1. Briefly describe the project. (Attach additional sheets as necessary.)

Applicant proposes to add a 12' x 4' gangway and a 6' x 25' floating dock to existing structure.

2. Please provide numbers and dimensions as follows:

Structure Type	Number of Support Pilings	Dimensions (Channelward of MHW or OHW)		Dimensions (Channelward of MLW- n/a for non-tidal water)		New, repair or maintain
		Width ft.	Length ft.	Width ft.	Length ft.	
Dock, Pier, Lift, gangway						
Gangway	0	4'	12'	4'	12'	new
Floating dock	2	6'	25'	6'	25'	"
Freestanding Pilings	Number 0					

Mooring Buoy: How many moorings will be installed? _____
 What will be used for the anchor(s)? _____
 Anchor/Mooring Block Weight _____
 Anchor Line Scope (Length or Ratio) _____
 Water Depth at Mooring Location _____



- 3. Approximately how wide is the waterway at this project site? 2 miles ft. (measured from MLW to MLW)
- 4. What will be the mean low water depth at the most channelward end of the mooring facility? 2.5 ft±
- 5. What type of material(s) will be used for construction of the mooring facility (e.g. salt treated wood, aluminum, fiberglass floats, etc.) Use of creosote-treated wood is prohibited.
Aluminum ramp, poly. floating dock with wood or composite decking.
- 6. Circle any of the following items that are proposed over subaqueous lands:
Fish Cleaning Stations/Benches/Ladders/Water Lines/ Satellite/Electric Lines/ Handrails/Other (Describe)

If any of the items are circled above, include their dimensions and location on the application drawings.

7. What will be the distance from the most channelward end of the docking facility to the edge of any natural or man-made channel? 5000ft. ± to Rehoboth Bay channel

8. Describe the vessels that will be berthed at the docking facility. Please draw proposed vessel locations on plans and drawings.

Make/model <u>Boston</u>	length <u>20'7"</u>	width <u>7'±</u>	draft <u>2'±</u>
Make/model <u>Whaler</u>	length _____	width _____	draft _____
Make/model _____	length _____	width _____	draft _____
Make/model _____	length _____	width _____	draft _____

9. Please provide a copy of the current state registration or Coast Guard Certificate of Documentation for each motorized vessel listed above.

Attached

10. Give the number and type of each Marine Sanitation Device (e.g. MSD III, Portable toilet) that will be used on vessels to be docked at the facility.

none

11. Is there currently a residence on the property? Yes No

12. Do you plan to reach the boat docking facility from your own upland property? Yes No If "No", explain your proposed means of access and provide documentation of easement or documentation authorizing access if you intend to cross someone else's property.

13. Will any portion of the structure be located in privately owned underwater land (such as a pond or lagoon) owned by someone other than the applicant? Yes No.
If yes, written permission of the underwater land owner must be provided with this application.

14. What is the width of the waterfront property frontage adjacent to subaqueous lands? 110 ft.
Will any portion of the structure or any vessel be placed within 10 feet of your neighbor's property line?
 Yes No
If yes, a letter of no objection from the adjacent property owner must be included with this application.



DELAWARE BOAT REGISTRATION OFFICE
89 KINGS HIGHWAY, DOVER, DELAWARE 19901
302 - 739 - 3498

NEW **RENEWAL** **TRANSFER** **ADDRESS CHANGE**

DUE PROOF OF OWNERSHIP MUST ACCOMPANY NEW APPLICATIONS & TRANSFERS.
BOAT REGISTRATION CERTIFICATE MUST ACCOMPANY RENEWAL APPLICATIONS.

DL ~~175~~ 175 **DECAL NO:** ~~1010~~ 1010 **FEE:** 6150 **EXEMPT:** YES NO

NEW & RENEWAL	ANNUAL	3 YEAR	OTHER
CLASS A - Less than 16'	\$10.00	\$30.00	Transfers
CLASS 1 - 16' or over & less than 26' in length	\$20.00	\$60.00	Current Registration Only \$3.45
CLASS 2 - 26' or over & less than 40' in length	\$30.00	\$90.00	Duplicate Certificate \$2.30
CLASS 3 - 40' or over & less than 65' in length	\$50.00	\$150.00	
CLASS 4 - 65' or over & not required to be documented	\$60.00	\$180.00	

COMPANY NAME: YES NO **PLEASE PRINT** **STATE OF PRINCIPAL USE: DELAWARE**

NAME(S) OF OWNER:

LAST Jenny	FIRST Margaret	MI	SSN/EIN
AND <input type="checkbox"/>	LAST	FIRST	MI
OR <input type="checkbox"/>	LAST	FIRST	MI



LIENHOLDER

MAILING ADDRESS
318 Salisbury St., Seabrook Rehoboth Beach DE 19971

SUMMER ADDRESS
CITY STATE ZIP

MAKE: Boston Whaler **YEAR BUILT:** '05 **LENGTH: FEET** 20 **INCHES** 7

CHECK ONE IN EACH BOX:

HULL	PROPULSION	USE	TYPE	FUEL	MSD
<input type="checkbox"/> 1. Wood WOOD	<input checked="" type="checkbox"/> 1. Outboard .. OB	<input checked="" type="checkbox"/> 1. Pleasure PLSR	<input checked="" type="checkbox"/> 1. Open OPN	<input checked="" type="checkbox"/> 1.. Gasoline G	<input type="checkbox"/> 1. TYPE 1
<input type="checkbox"/> 2. Metal METAL	<input type="checkbox"/> 2. Inboard ... IN	<input type="checkbox"/> 2. Documented DOC	<input type="checkbox"/> 2. Cabin CAB	<input type="checkbox"/> 2.. Diesel ... D	<input type="checkbox"/> 2. TYPE 2
<input type="checkbox"/> 3. Inflatable .. INFLA	<input type="checkbox"/> 3. IN/OB IO	<input type="checkbox"/> 3. Dealer DEAL	<input type="checkbox"/> 3. House HSE	<input type="checkbox"/> 3.. Other ... O	<input type="checkbox"/> 3. TYPE 3
<input checked="" type="checkbox"/> 4. Fiberglass FIBER	<input type="checkbox"/> 4. Jet Drive.. JT	<input type="checkbox"/> 4. Commercial Pass PASS	<input type="checkbox"/> 4. Other OTR		<input type="checkbox"/> 4. TYPE P
<input type="checkbox"/> 5. Other OTHER	<input type="checkbox"/> 5. Other OT	<input type="checkbox"/> 5. Commercial Fishing FISH	<input type="checkbox"/> 5. Auxiliary Sail AXS		
		<input type="checkbox"/> 6. Commercial Other .. OTHER	<input type="checkbox"/> 6. PWC PWC		
		<input type="checkbox"/> 7. Rental RENT	<input type="checkbox"/> 7. Pontoon .. PON		
		<input type="checkbox"/> 8. Exempt EXE	<input type="checkbox"/> 8. Inflatable INF		

ENGINE MFG. Mercury **ENGINE#** 1B045164 **INSURANCE CO.**

HULL IDENTIFICATION NUMBER

CIRCLE IF ALPHA	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	ISSUE DATE: 12/2/04
ENTER HERE	B	W	C	E	1	0	6	0	G	4	0	5					MONTH DAY YEAR
CIRCLE IF NUMERIC	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	N	EXPIRATION DATE 2005 DECEMBER 31

NUMBER PREVIOUSLY ISSUED N/A **PREVIOUS OWNER** N/A

ISSUED BY: *[Signature]* **SIGNATURE OF BOAT OWNER(S)** *[Signature]*

OFFICE: *[Signature]* **PHONE NO:** (302) 540-9900

DATE OF BIRTH: 7/28/78

**SUPPLEMENTAL APPROVAL:
SL-065/05; SU-376/06; SU-022/13:
ADDITION OF 12' X 4' GANGWAY
AND 6' X 25' FLOATING DOCK**

IN: Rehoboth Bay
AT: 318 Salisbury Street, Seabreeze
Rehoboth Beach, Sussex County, DE 19971
(Tax Map Parcel #3-34-20.17-14.00)

APPLICANT: Marshall T. Jenney

DATE: April 16, 2019

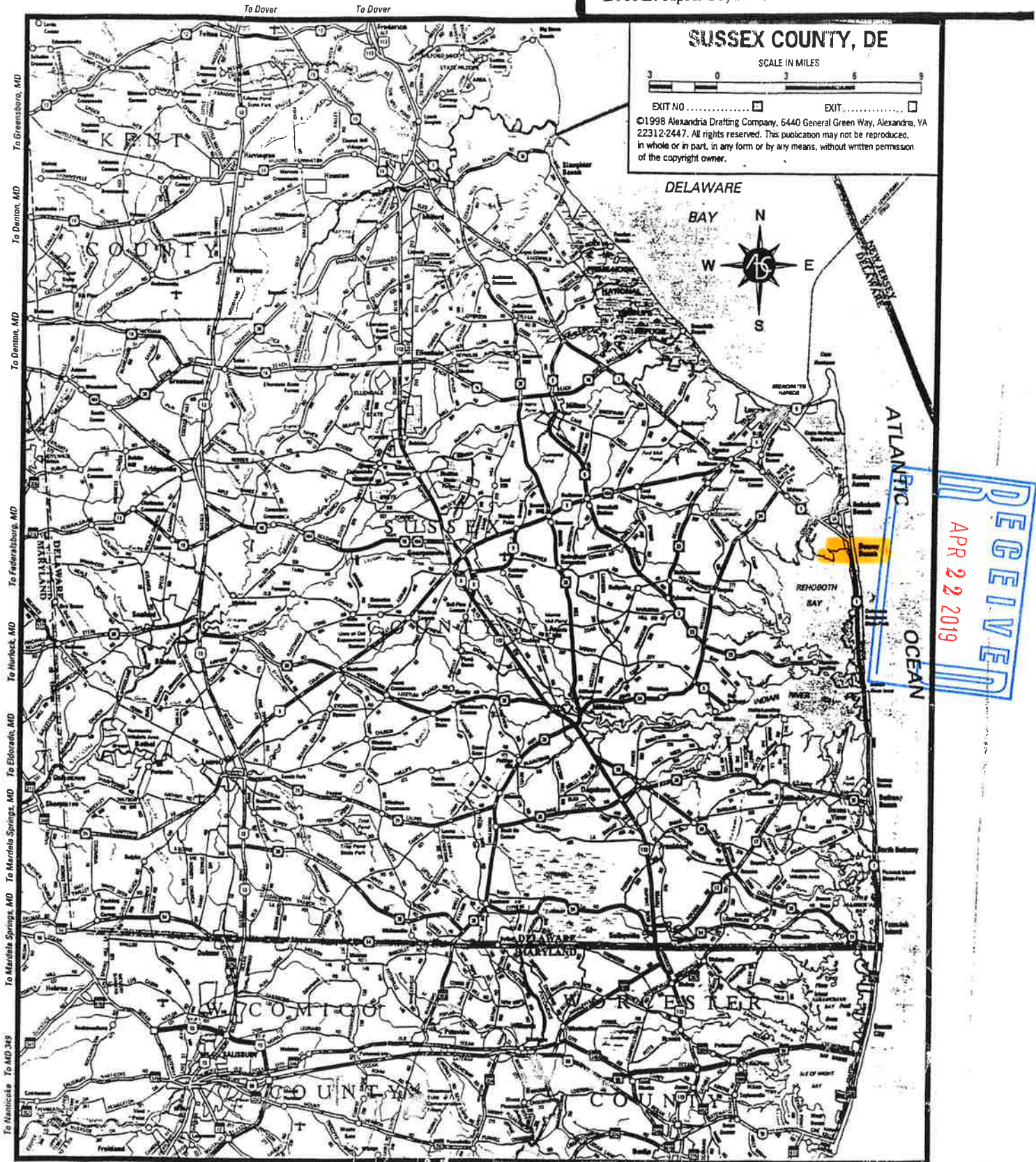


Figure 1. Map of Sussex County, Delaware showing site location, Dewey Beach.

**SUPPLEMENTAL APPROVAL:
 SL-065/05; SU-376/06; SU-022/13:
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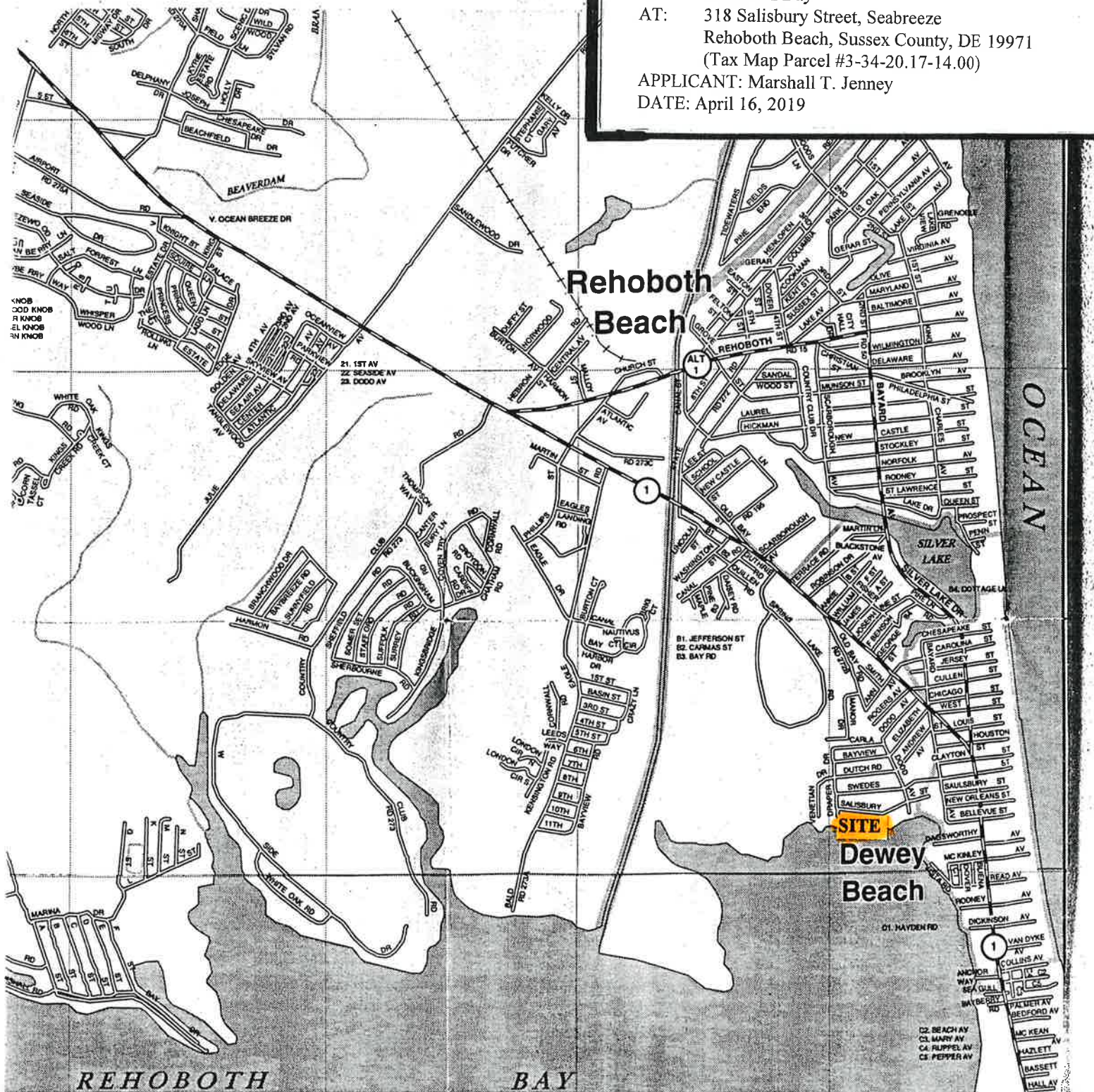


Figure 2. Map of Rehoboth Beach/Dewey Beach and vicinity, Sussex County, Delaware, showing site location, 318 Salisbury Street, Seabreeze. Directions to site (from Dover): SR-1 southbound toward Dewey Beach; right turn onto Dodd Avenue; right turn onto Salisbury Street, site is on left, 318 Salisbury Street, Seabreeze.

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 By _____

**SUPPLEMENTAL APPROVAL:
SL-065/05; SU-376/06; SU-022/13:
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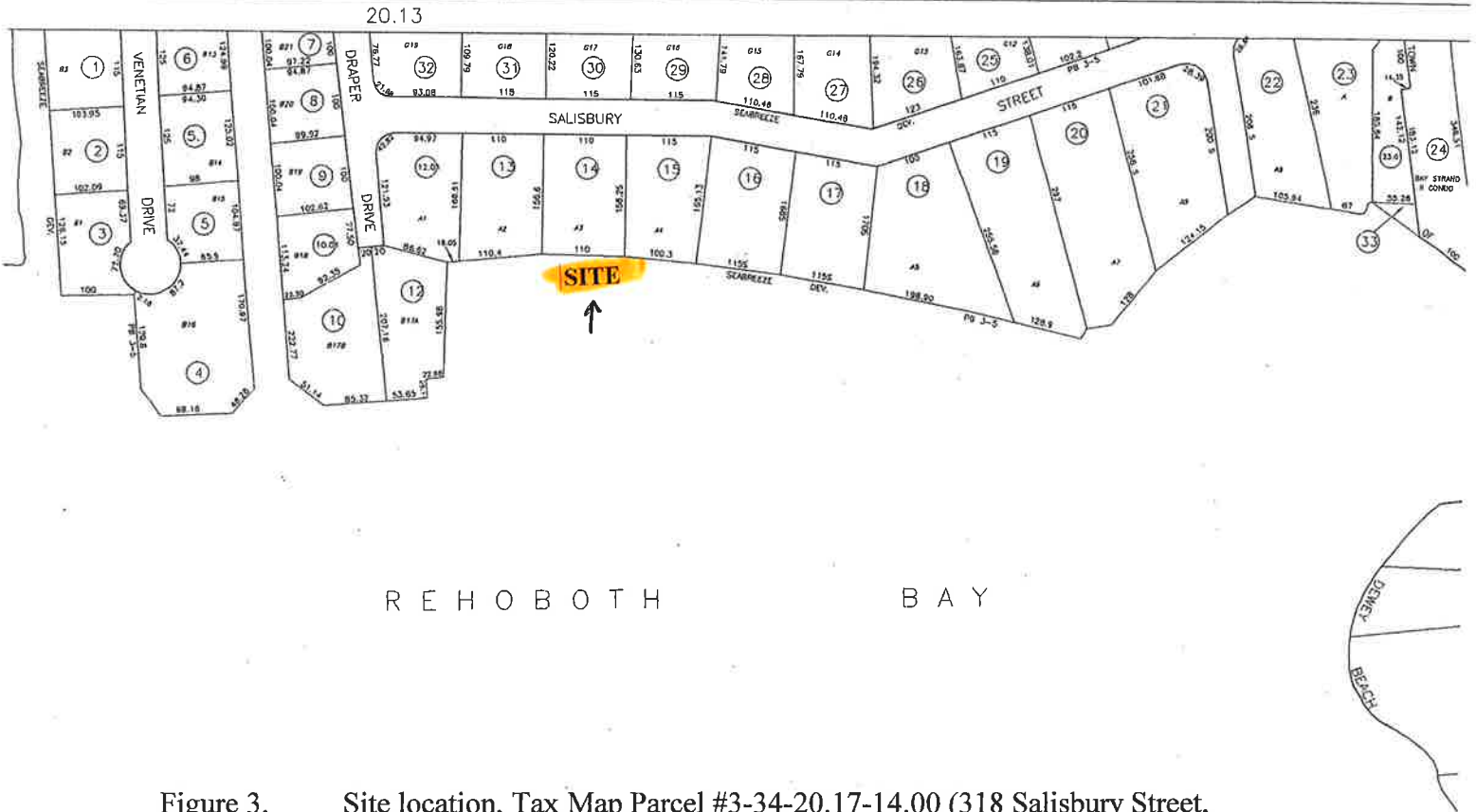


Figure 3. Site location, Tax Map Parcel #3-34-20.17-14.00 (318 Salisbury Street, Seabreeze, Dewey Beach, Sussex County, Delaware).



**SUPPLEMENTAL APPROVAL:
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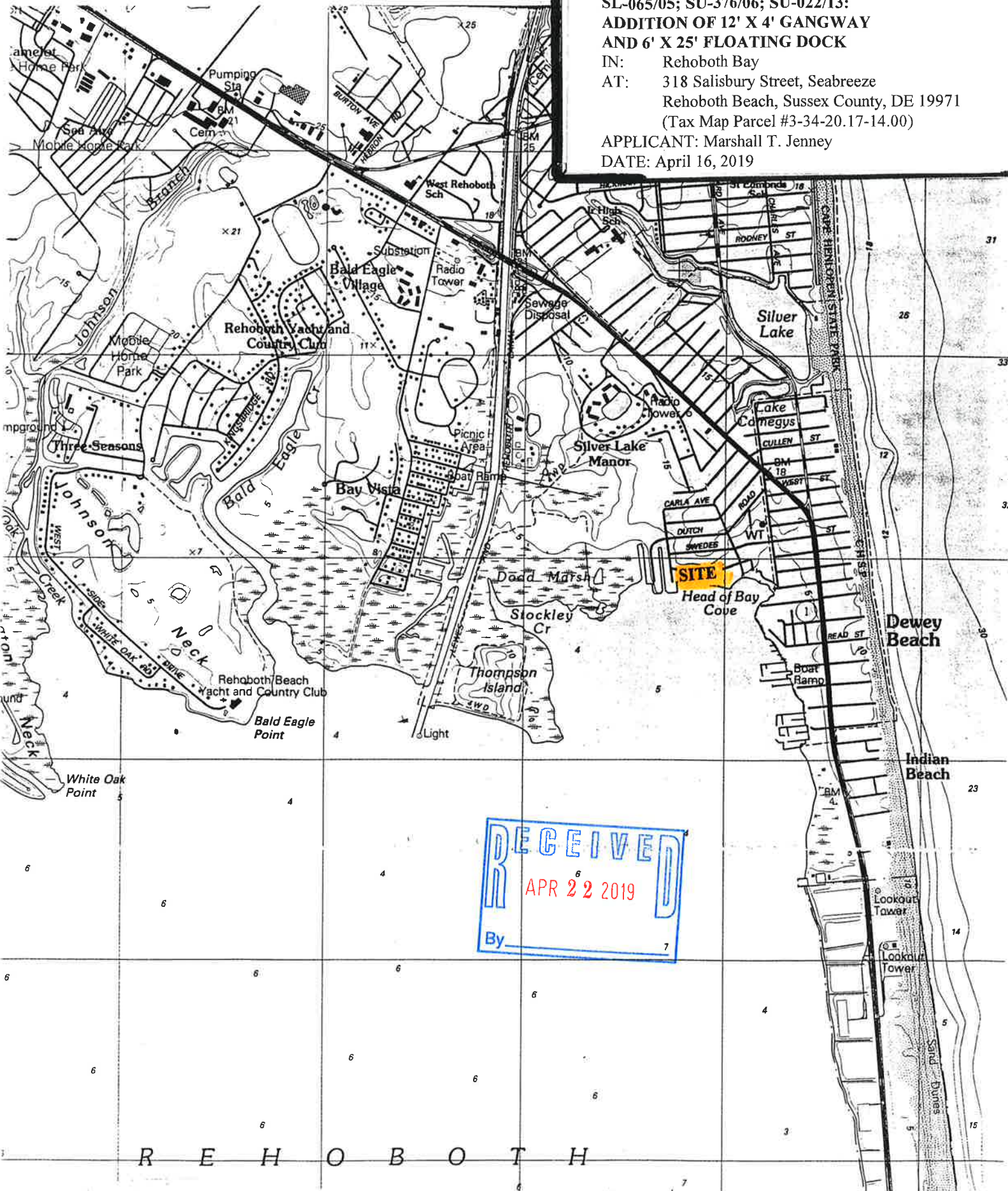


Figure 4.

Site location on USGS topographic map, Rehoboth Beach, Delaware. Site is adjacent to Rehoboth Bay. Scale: 1" = 2,000'.

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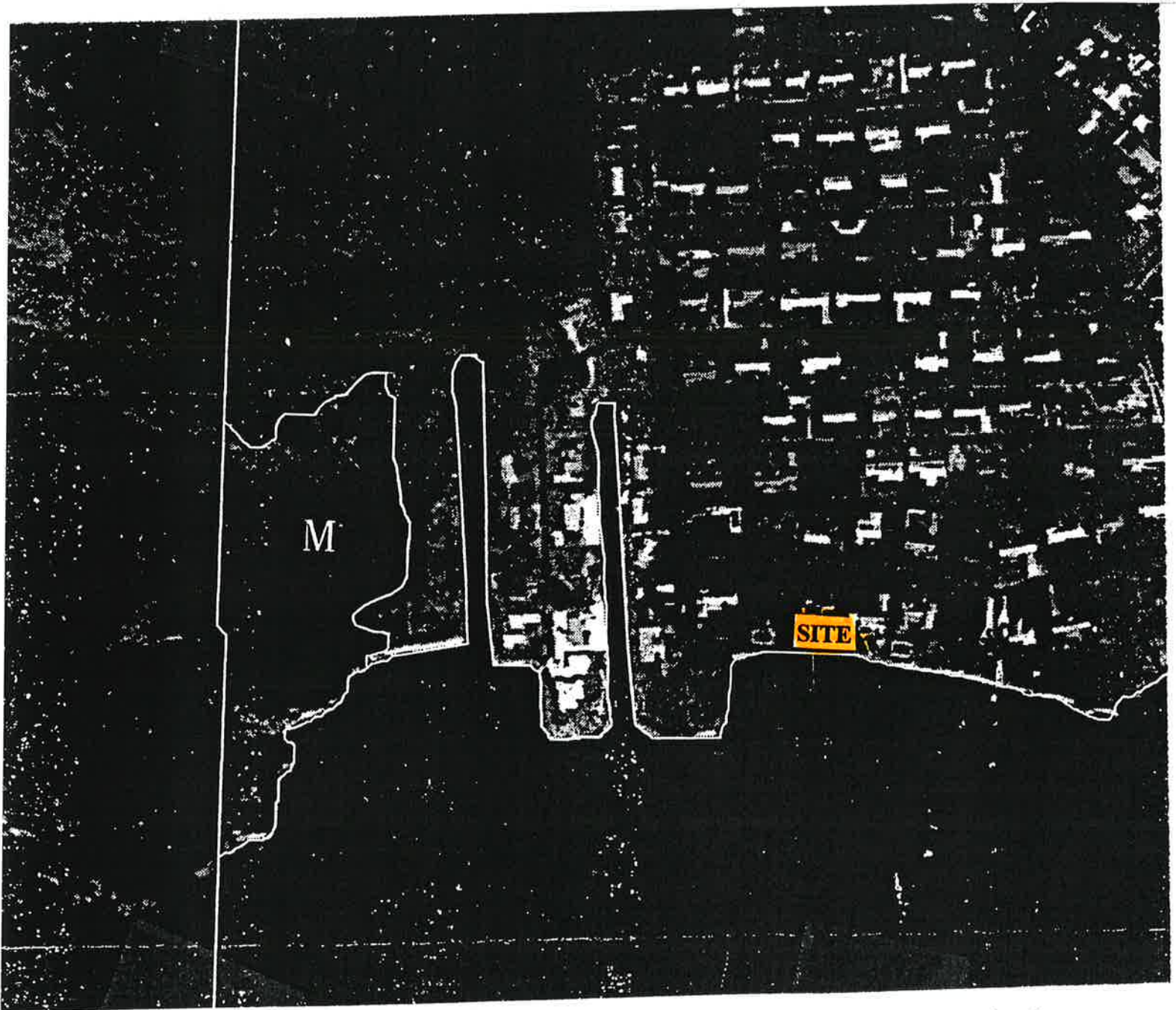


Figure 5. Site location on State of Delaware DNREC Wetland Map #018 (1988 photobase) showing site location, adjacent to Rehoboth Bay. Project site mapped W (water). Scale: 1" = 300'.

APR 22 2019
By _____

SUPPLEMENTAL APPROVAL:
SL-065/05; SU-376/06; SU-022/13:
ADDITION OF 12' X 4' GANGWAY
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IN: Rehoboth Bay
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Rehoboth Beach, Sussex County, DE 19971
(Tax Map Parcel #3-34-20.17-14.00)
APPLICANT: Marshall T. Jenney
DATE: April 16, 2019



Figure 6. Aerial photograph of site, 318 Salisbury Street, Seabreeze, Dewey Beach, Sussex County, Delaware (Tax Map Parcel #3-34-20.17-14.00), adjacent to Rehoboth Bay. Width of waterway at project site > 2 miles. Existing structures, 110' bulkhead; 110' stone rip-rap; 170' x 4' pier; two 6' x 30' docks; 4-piling boat lift; and floating PWC dock authorized by SL-065/05; SU-376/06; and SU-022/13. Applicant proposes to install a 12' x 4' gangway and a 6' x 25' floating dock.

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APR 22 2019
By _____

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APPLICANT: Marshall T. Jenney

DATE: April 16, 2019



Figure 7. Photograph of site, 318 Salisbury Street, Seabreeze, Dewey Beach, Sussex County, Delaware (Tax Map Parcel #3-34-20.17-14.00), adjacent to Rehoboth Bay. Existing structures, 110' bulkhead; 110' stone rip-rap; 170' x 4' pier; two 6' x 30' docks; 4-piling boat lift; and floating PWC dock authorized by SL-065/05; SU-376/06; and SU-022/13. Applicant proposes to install a 12' x 4' gangway and a 6' x 25' floating dock. See Figure 8 for plan view and cross-section sketches.



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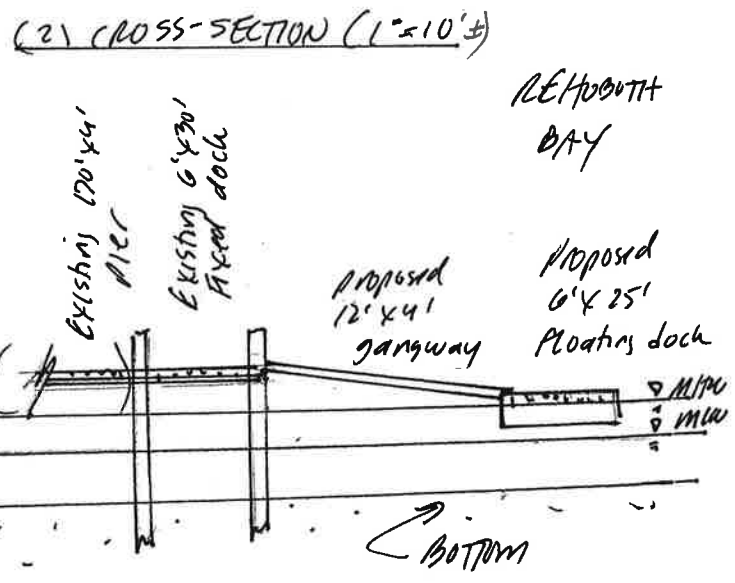
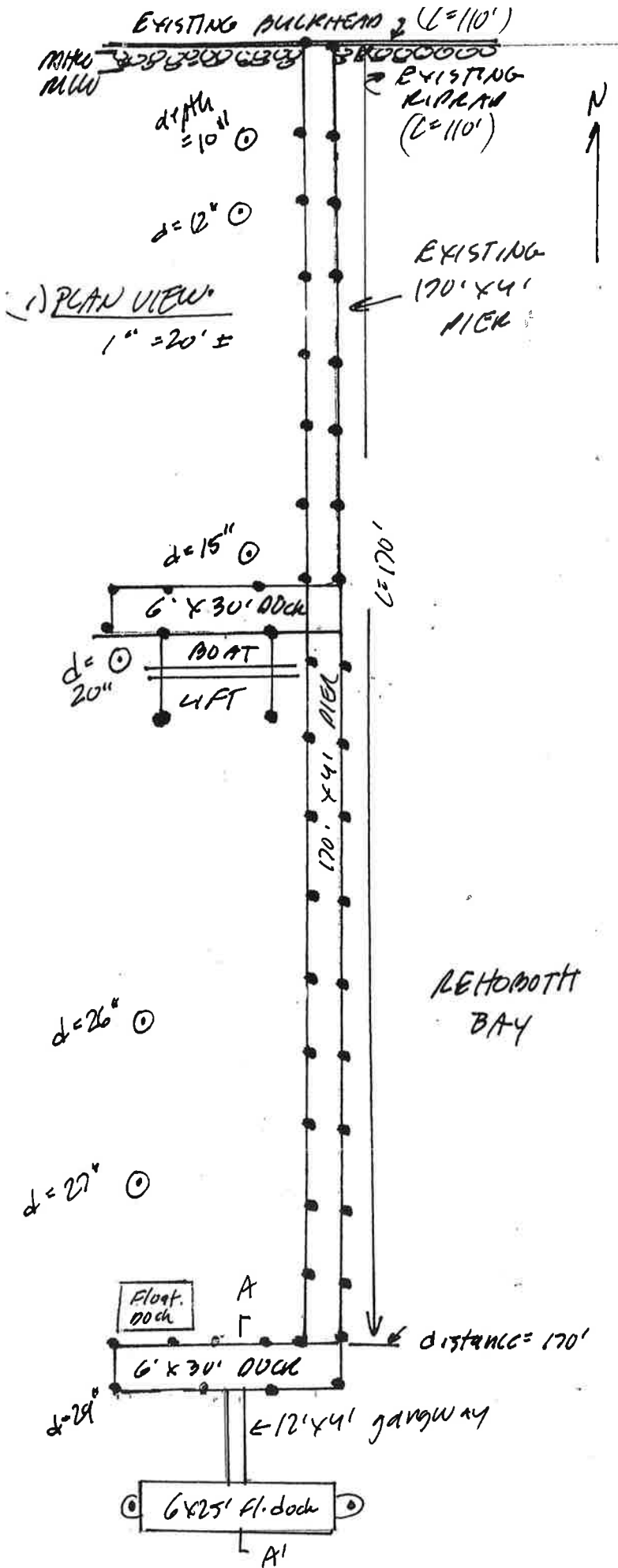


Figure 8. Plan view and cross-section sketches showing existing and proposed structures. Sketches for permit application purposes only.

17688 02817 315

NO SURVEY PERFORMED OR REQUESTED

Tax Parcel No.3-3420.1714.00

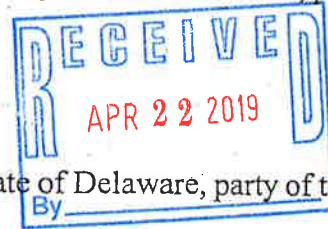
Prepared By and Return to:
Daniel K. Hogan, Esquire
1701 Shallcross Avenue, Suite C
Wilmington, DE 19806

THIS DEED, MADE THIS 7th day of January in the year of our LORD two thousand three (2003),

BETWEEN JOHN K. JENNEY, of New Castle County, State of Delaware, party of the first part,

- A N D -

MARSHALL T. JENNEY, of New Castle County, State of Delaware, party of the second part,



WITNESSETH, That the said party of the first part, for and in consideration of the sum of **TEN AND 00/100 DOLLARS (\$10.00)** lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grant and convey unto the said party of the second part,

ALL THAT CERTAIN LOT piece or parcel of land situate, lying and being in Seabreeze Development, Lewes and Rehoboth Hundred, Sussex County, Delaware, generally know as Lot Number A-3 of Seabreeze Development, and so designated upon a certain Plot Plan entitled "Seabreeze Development, near Dewey Beach, Sussex County, Delaware", as prepared by Charles C. Brown, Surveyor, December, 1953, and which is now of record in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware, in Plot Book 2, Page 68, as reference thereunto being had will more fully and largely appear, including reparian rights along the frontage thereof on Rehoboth Bay.

Consideration: \$0.00 Exempt Code: A

County	State	Total
0.00	0.00	0.00

counter Date: 03/28/2003

SUBJECT TO any and all covenants, easements, restrictions, conditions of record and as contained in prior deeds in the Office of the Recorder of Deeds in and for Sussex County, Georgetown, Delaware.


BEING the same land and premises which MEREDITH T. MARSHALL, f/k/a MEREDITH T. JENNEY by Deed dated May 1, 2001 and recorded June 18, 2001, in the Office of the Recorder of Deeds in and for Sussex County, Georgetown, Delaware, in Deed Book 02600, Page 281 did grant and convey unto JOHN K. JENNEY, in fee.

Grantees' Mailing Address:
3 Jenna Lane
Rehoboth Beach, DE 19971

Tax Parcel No. 3-34-20.17-14.00

IN WITNESS WHEREOF, the said party of the first part has hereunto set his hand and seals, the day and year aforesaid.

**SEALED AND DELIVERED
IN THE PRESENCE OF:**



WITNESS



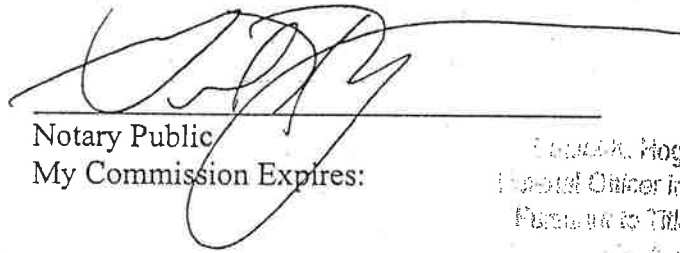
JOHN K. JENNEY JR (SEAL)



STATE OF DELAWARE)
) SS.
COUNTY OF NEW CASTLE)

BE IT REMEMBERED, that on this 7 day of January in the year of our LORD, 2003, personally came before me, JOHN K. JENNEY, party to this Indenture known personally to be such, and severally acknowledged this Indenture to be his Deed.

GIVEN under my Hand and Seal of office, the day and year aforesaid.



Notary Public
My Commission Expires:

Edward A. Hogan, Attorney At Law
Notary Public in the State of Delaware
Pursuant to Title 28, Delaware Code
§ 320(c)(2)

Transfer between parent and child pursuant to 30 Del Code § 5401 (i)

OFFICE OF DEEDS
JOHN F. BRADY

03 MAR 28 AM 10: 26

SUSSEX COUNTY
DOC. SURCHARGE PAID



Received

MAR 31 2003

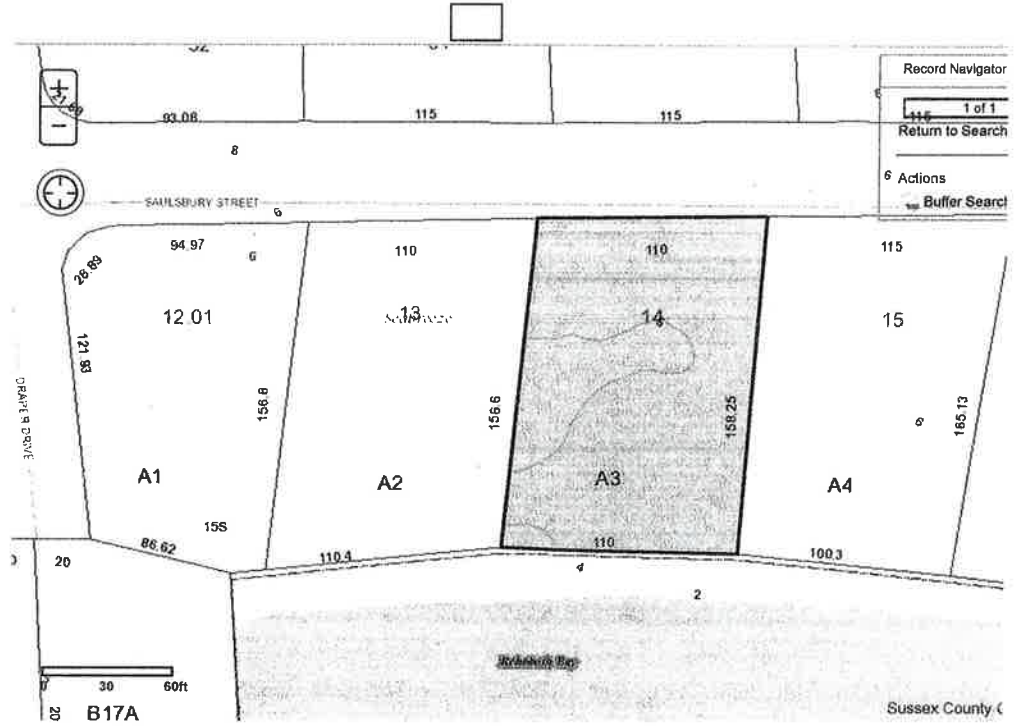
ASSESSMENT DIVISION
OF SUSSEX CTY

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PARID: 334-20,17-14.00
JENNEY ERIN C



RECEIVED
APR 22 2019
 By _____

EXHIBIT 2



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-9943
FAX (302) 739-6304

NOTICE OF VIOLATION W-19-WSL-01

Date of Violation: May 9, 2019

July 30, 2019

Mr. Marshall Jenney
318 Salisbury Street
Rehoboth Beach, DE 19971

SENT BY FIRST CLASS MAIL

Violation: Placement of unauthorized structures in State-regulated subaqueous lands and the violation of lease conditions

Location: 318 Salisbury Street Rehoboth Beach, DE 19971
(Tax Parcel # 3-34-20.17-14.00)

Mr. Jenney:

Pursuant to the authority of 7 Del. C. Chapter 72 and 7 Del. Admin. C § 7504 of the *Regulations Governing the Use of Subaqueous Lands* (Regulations), the Department of Natural Resources and Environmental Control (Department) is issuing Mr. Marshall Jenney a Notice of Violation (NOV)

On April 22, 2019 the Wetlands and Subaqueous Lands Section (WSLS) received a supplemental lease application for your property to install a gangway and floating dock. On May 9, 2019 WSLS staff conducted a routine site visit prior to processing the supplemental approval for construction in the Rehoboth Bay. During the site visit WSLS staff observed multiple unauthorized structures. Upon inspection it appears that the following structures have not been authorized by the WSLS or that portions of the existing structure were required to be removed in accordance with the approved plans of your current Subaqueous Lands Lease. Upon inspection by WSLS it has been determined that the following structures have not been authorized or were required to be removed: A 6 by 25 foot long dock with associated tongue and groove sheeting, two mooring pilings, a storage box on the pier, a cantilever kayak rack and 31 linear feet of tongue and groove sheeting installed in front of the channelward most dock. On the basis of the information gathered during the site assessments, it has been determined that you are in violation of 7 Del. C. 72 and the Regulations. The violation includes, but is not limited to:

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1. Several unauthorized structures within the waters of the Rehoboth Bay. Placing or allowing material to encroach into State-regulated subaqueous lands without a permit is a violation of 7 Del. C. 72 §7205(a) which states:

“No person shall deposit material upon or remove or extract materials from, or construct, modify, repair or reconstruct, or occupy any structure or facility upon submerged lands or tidelands without first having obtained a permit, lease, or letter of approval from the Department.”

and is a violation of Section 2.4.2.1 of the Regulations, which states:

2.4.2 The following types of activities on public subaqueous lands require a lease, permit, or letter of authorization from the Department:

2.4.2.1 Construction or use of any structure on, in, under, or over public subaqueous lands, including but not limited to, any convenience structures, shoreline erosion control structure or measure, or boat docking facility.

and pursuant to Section 2.10 of the Regulations, the Secretary reserves the right to revoke any lease. Section 2.10 which states:

2.10 Revocation. The Secretary may revoke any lease or permit for failure to comply with these Regulations or the terms and conditions of the lease or permit. The Secretary may, upon expiration or cancellation of a lease, direct the lessee to remove all structures and equipment from the leased area within 180 days. If the lessee fails to remove the structures and equipment thereon within the 180 day period, the Department shall, at its option and after 10 days from receipt of written notice by certified mail to the lessee, have the structures and equipment removed at the expense of the lessee.

The WSLs is hereby serving you notice of this violation and providing you with a sixty (60) day period, from the date of your receipt of this notice, for obtaining voluntary compliance by removing all of the unauthorized structures listed above.

Failure to obtain voluntary compliance before the end of this 60-day period will result in further enforcement action against you including possible monetary fines pursuant to 7 Del. C., § 7214. Additionally, the Department, to the extent necessary, reserves the right to take additional enforcement actions regarding this and any other violations by Mr. Marshall Jenney including, but not limited to, one or more of the following: an action under 7 Del. C. § 6005(b)(1) seeking penalties for past violations, an action under § 7 Del. C. § 6005(b)(2) seeking penalties for continuing violations, an action in the Court of Chancery pursuant to 7 Del. C. § 6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of an administrative penalty and the recovery of the Department's costs and attorney's fees pursuant to 7 Del. C. §§ 6005(b)(3) & (c)(1). Nothing in this NOV shall be deemed to estop, or in any way preclude, any additional

enforcement action for this or any other violations, including administrative and civil penalties or each day of violation, or an action for the recovery of Department costs expended in abating these violations.

Please know that this Notice of Violation will be made available through the Department's website (www.dnrec.delaware.gov). Information concerning your noncompliance with Delaware Code and the Department Regulations will be posted within 24 hours following your receipt of this notice. Upon further review of the violations, the Department reserves the right to pursue additional enforcement action.

If you have any further questions or concerns regarding this matter, please feel free to call me or Patty Murray of the Wetlands and Subaqueous Lands Section at (302) 739-9943.

Sincerely,



Tyler Brown, Section Manager
Wetlands and Subaqueous Lands Section

cc: Patty Murray, Program Manager, Wetlands and Subaqueous Lands Section

EXHIBIT 3



COASTAL & ESTUARINE RESEARCH, INC.

Marine Studies Complex
P.O. Box 674
Lewes, Delaware 19958
302-645-9610

September 25, 2019

Tyler Brown
Wetlands and Subaqueous Lands Section, DNREC
89 Kings Highway
Dover, DE 19901

Dear Tyler:

I have received a copy of Notice of Violation W-19-WSL-01 (dated July 30, 2019), sent to Marshall Jenney, c/o Richard Abbott, Esq. (received August 9, 2019), in which the DNREC Wetlands and Subaqueous Lands Section lists several violations at Mr. Jenney's property, 318 Salisbury Street, Rehoboth Beach, DE 19971 (Tax Map Parcel #3-34-20.17-14.00), as well as copies of email correspondence between you and Mr. Abbott. The following structures are listed as required to be removed (as unauthorized structures and/or violations of SL-065/05; SU-376/06; and/or SU-022/13):

- (1) A 6' x 25' dock with associated tongue and groove sheeting;
- (2) Two mooring pilings;
- (3) A storage box on the pier;
- (4) A cantilevered kayak rack; and
- (5) 31 linear feet of tongue and groove sheeting in front of the channelward most dock.

Mr. Jenney agrees to remove items (1) and (2), and will do so within 60 days of receipt of the violation notice (Oct. 8, 2019). The specific date is dependent on getting a contractor on site; if the contractor(s) Mr. Jenney contacts are not able to conduct the work by the deadline, Mr. Abbott or I will contact your office to request an extension, and will provide a reasonable time frame to have the work completed.

Mr. Jenney would like to request that he be able to maintain item (3), the 3' x 6' cantilevered storage box, item (4), the cantilevered kayak racks (four 2" x 6" x 36' long boards), and item (5), the 31' of sheeting at the outer dock (which works very well to protect the structures and vessels from wave damage during storms). I am attaching Appendix A (revised) describing these features, and Figure 8 (revised), as an amended application supplementing the original application submitted on April 16, 2019.

Sincerely,

Evelyn M. Maurmeyer, Ph. D.

Enclosures

cc: Marshall T. Jenney, applicant
Richard L. Abbott, Esq.

BOAT DOCKING FACILITIES
(Revised 9/05/2019)

Any boat docking facility for more than four (4) vessels is considered a marina facility (see definitions and explanations section) and requires the applicant to complete Appendices N and O, and make application to the U. S. Army Corps of Engineers for approval.

Please make sure answers to all of the questions in this appendix correspond with information on the application drawings.

1. Briefly describe the project. (Attach additional sheets as necessary.)

Applicant proposes to add a 12' x 4' gangway and a 6' x 25' floating dock to existing structure; and to maintain 2 kayak racks; dock box; sheeting on outer dock

2. Please provide numbers and dimensions as follows:

Structure Type	Number of Support Pilings	Dimensions (Channelward of MHW or OHW)		Dimensions (Channelward of MLW- n/a for non-tidal water)		New, repair or maintain
		Width ft.	Length ft.	Width ft.	Length ft.	
Dock, Pier, Lift, gangway						
Gangway	0	4'	12'	4'	12'	
Floating dock	2	6'	25'	6'	25'	new
Kayak racks (2)	0	2' x 6'	36'	2' x 6'	36'	Maintain
Dock Box	0	3'	6'	3'	6'	"
Sheeting/wave break	0	4'	31'	4'	31'	"
Freestanding Pilings	Number 0					

Mooring Buoy: How many moorings will be installed? _____
 What will be used for the anchor(s)? _____
 Anchor/Mooring Block Weight _____
 Anchor Line Scope (Length or Ratio) _____
 Water Depth at Mooring Location _____

- Approximately how wide is the waterway at this project site? 2 miles (measured from MLW to MLW)
- What will be the mean low water depth at the most channelward end of the mooring facility? 2.5 ft±
- What type of material(s) will be used for construction of the mooring facility (e.g. salt treated wood, aluminum, fiberglass floats, etc.) Use of creosote-treated wood is prohibited.
 Aluminum ramp, poly. floating dock with wood or composite decking.
- Circle any of the following items that are proposed over subaqueous lands:
 Fish Cleaning Stations/Benches/Ladders/Water Lines/ Satellite/Electric Lines/ Handrails/Other (Describe)

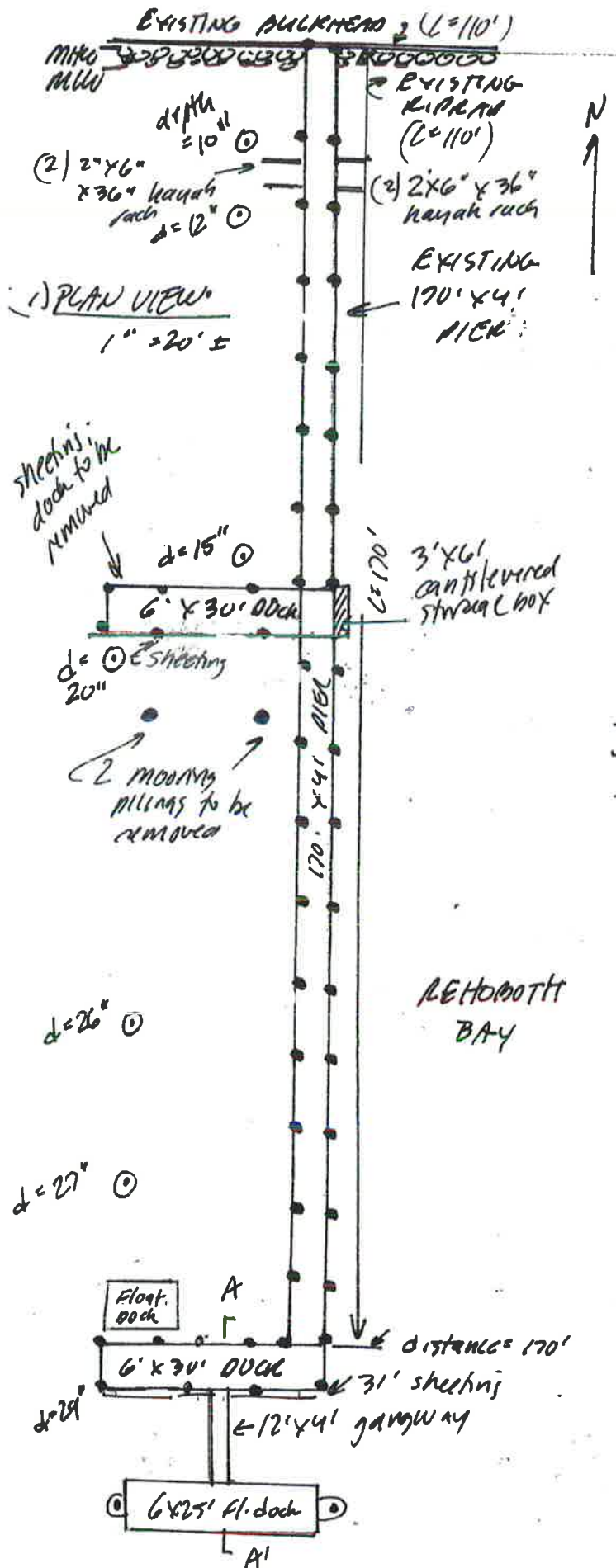
If any of the items are circled above, include their dimensions and location on the application drawings.

- Kayak racks (2) - 2' x 6" boards x 36" length @
- Channelward dock box, 3' x 6'
- Wooden sheeting (wave break), 4' L x 41' W.

7. What will be the distance from the most channelward end of the docking facility to the edge of any natural or man-made channel? 5000ft. ± to Rehoboth Bay channel
8. Describe the vessels that will be berthed at the docking facility. Please draw proposed vessel locations on plans and drawings.

Make/model	<u>Boston</u>	length	<u>20'7"</u>	width	<u>7'±</u>	draft	<u>2'±</u>
Make/model	<u>Whaler</u>	length	<u> </u>	width	<u> </u>	draft	<u> </u>
Make/model	<u>Wave runner</u>	length	<u>10'±</u>	width	<u>4'±</u>	draft	<u>1'±</u> (2)
Make/model	<u>Sunfish</u>	length	<u>10'±</u>	width	<u>5'±</u>	draft	<u>1'±</u>

9. Please provide a copy of the current state registration or Coast Guard Certificate of Documentation for each motorized vessel listed above.
Attached for Boston Whaler.
10. Give the number and type of each Marine Sanitation Device (e.g. MSD III, Portable toilet) that will be used on vessels to be docked at the facility.
none
11. Is there currently a residence on the property? Yes No
12. Do you plan to reach the boat docking facility from your own upland property? Yes No If "No", explain your proposed means of access and provide documentation of easement or documentation authorizing access if you intend to cross someone else's property.
13. Will any portion of the structure be located in privately owned underwater land (such as a pond or lagoon) owned by someone other than the applicant? Yes No.
If yes, written permission of the underwater land owner must be provided with this application.
14. What is the width of the waterfront property frontage adjacent to subaqueous lands? 110 ft.
Will any portion of the structure or any vessel be placed within 10 feet of your neighbor's property line?
 Yes No
If yes, a letter of no objection from the adjacent property owner must be included with this application.



SUPPLEMENTAL APPROVAL:
 SL-065/05; SU-376/06; SU-022/13;
ADDITION OF 12' X 4' GANGWAY
AND 6' X 25' FLOATING DOCK
 IN: Rehoboth Bay
 AT: 318 Salisbury Street, Seabreeze
 Rehoboth Beach, Sussex County, DE 19971
 (Tax Map Parcel #3-34-20.17-14.00)
 APPLICANT: Marshall T. Jenney
 DATE: April 16, 2019 *Revised 9/25/2019*

Maintain
 ○ 2 kayak racks
 ○ storage box
 ○ 31' sheetpiling

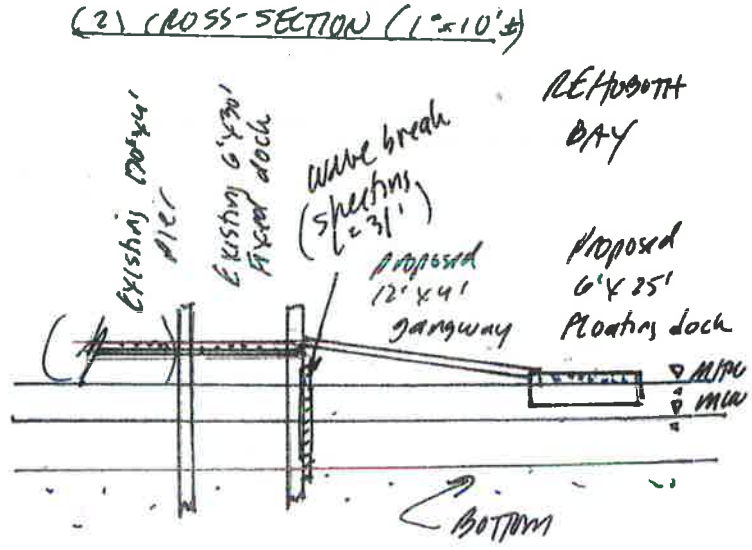


Figure 8. Plan view and cross-section sketches showing existing and proposed structures. Sketches for permit application purposes only.

EXHIBIT 4

ABBOTT LAW FIRM LLC

RICHARD L. ABBOTT, ESQ.
302.489.ALAW
RICH@RICHABBOTTLAWFIRM.COM

October 21, 2019

VIA EMAIL ONLY

Mr. Tyler Brown
Environmental Program Manager
Wetlands And Subaqueous Land Section
Delaware Department of Natural Resources And
Environmental Control
89 Kings Highway
Dover, DE 19901

*Re: Marshall Jenney
Subaqueous Lands Permit – Amended Application dated 9/26/19*

Dear Tyler:

Please accept this letter as the response to your email to Evelyn Maurmeyer on October 17, 2019 regarding the above matter.

I respond to the 5 points contained in your letter *seriatim*:

1. As I advised in my email to you on October 17th, the dock and pilings have been removed.
2. Your decision that “none of the structures can be authorized by DNREC through SPGP-20” is unclear. Please explain. Are you alleging that DNREC cannot issue permits for subaqueous lands?
3. Your request for “additional information why the vertical wall structure is needed and why there is no other alternative” is also unclear. If you are referring to the wave break installation, then the answer is: the installation very successfully dissipates strong wave impacts that sometimes develop on the Rehoboth Bay, particularly during storms. This simple, inexpensive means of providing protection from wave surges is the most economical and effective means of addressing the problem. No reasonable alternative exists.
4. You ask about existing dock installations, which have been previously approved by DNREC. They are not part of the current application. Therefore, this is a non-issue.

5. You request “justification for the need to have kayak storage and the cantilevered storage box...over public subaqueous lands.” You can see the storage box in the photos that were forwarded to you by email on October 17th (showing the removal of the items referenced in paragraph 1 above). Both the storage box and kayak rack are *de minimis* at best in terms of impact. And they provide necessary storage, to insure that items do not get washed away into the Rehoboth Bay.

Additionally, I wanted to take this opportunity to correct your apparent mistaken impression regarding the applicable law and legal standards. Seven (7) relevant holdings by the Delaware Court of Chancery in *Oceanport Industries, Inc. v. State*, 1993 WL 181297, Jacobs, V.C. (Del. Ch., May 18, 1993) present salient legal points:

1. “Among the riparian property rights associated with ownership of the foreshore is the right to wharf out directly from the foreshore to the bulkhead line and the right to have free access to the navigable portion of the river.” (or in this case Rehoboth Bay)
2. There is a “right to enlarge dock facilities beyond the low water mark and over subaqueous land owned by the State up to the point of navigability.”
3. 7 *Del. C.* § 7201-7216 does not affect the Delaware common law governing such riparian rights.
4. The State can only regulate a riparian owner’s construction of a wharf over State-owned land to protect the public interest.
5. The State bears the burden of proof to establish that its restriction of common law riparian rights for “public purposes” – *i.e.* there is a specific superior public right that would be violated if the installation were permitted.
6. “The State’s ownership of the subaqueous land is not absolute.”
7. “Such ownership is subject to the riparian owner’s right ‘to make use of the public property in front of his land as one of the public.’”

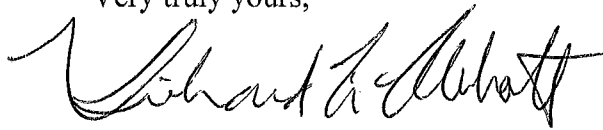
Under Delaware riparian rights law, it is incumbent upon DNREC to meet its burden of proof as to why it would not approve installations in the subaqueous lands. So while Mr. Jenney is happy to provide you with explanations for why his *de minimis* items are needed, at the end of the day DNREC must have a rational basis to decline approval.

Mr. Tyler Brown, Section Manager
DNREC Wetlands And Subaqueous Land Section
October 21, 2019
Page 3

Indeed, in the *Oceanport Industries, Inc.* case, the Court held that the State's lack of any such rationale rendered its decision legally invalid. As the Court held, DNREC is free to regulate the subaqueous lands, but absent a superior public right the owner of the foreshore is entitled to make installations.

It is my client's hope that with the proper legal focus, DNREC will be able to promptly approve the pending application. Thank you for your time and consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Richard L. Abbott". The signature is fluid and cursive, with a large initial "R" and "A".

Richard L. Abbott

RLA:cth
File No.: 471.02

cc: Mr. Marshall Jenney – Via Email Only
Ms. Evelyn Maurmeyer – Via Email Only

EXHIBIT 5



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-9943
FAX (302) 739-6304

January 27, 2020

SENT VIA EMAIL

Mr. Richard Abbott
Abbott Law Firm, LLC
724 Yorklyn Road, Suite 240
Hockessin, DE 19707

Re: Marshall Jenney Subaqueous Lands Lease Application Tax Parcel number 334-20.17-14.00

Mr. Abbott:

This letter is in response to your letter dated October 21, 2019. In your letter you attempted to address several questions that I had asked in my October 17, 2019 email to Evelyn Maurmeyer regarding the amended subaqueous lands lease application received by the Wetlands and Subaqueous Lands Section (WSLS) on September 26, 2019.

First, I would like to thank you for providing photographic evidence of the removal of three of the five unpermitted structures associated with Mr. Jenney's existing Subaqueous Lands Lease. Below is a mixture of answers to your questions and also additional clarification of the items that are still outstanding at this time.

1. The WSLS cannot issue the Department of the Army General Permit CENAP-OP-R-Delaware-State Programmatic General Permit-20 (SPGP-20) for the structures your client requested in the amended application. SPGP-20 is a Department of the Army General Permit issued on the Corps' behalf by the State of Delaware, provided that the activities/structures meet the criteria established in the permit. The remaining unpermitted structures do not meet those criteria, which is why I recommended that your client reach out to the Army Corps of Engineers on how to move forward.
2. Your response for providing additional information for why the vertical wall structure and/or wave break is needed and why other alternatives do not exist does not reflect the language from the Regulations Governing the Use of Subaqueous Lands, 7 Del. Admin. C § 7504 ("Regulations"). Section 4.10.1.4 of the Regulations states, "Vertical-walled structures shall be allowed only where a

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non-vertical structure, designed to equal standards, would be ineffective to control erosion, where deleterious environmental effects associated with the construction of vertical structures would be less than the impacts on the adjacent environment during construction of a non-vertical structure, where functionally, no practical alternatives exist for certain water-dependent facilities or activities, or where generally accepted engineering practices would preclude the use of non-vertical walled structures.”

3. In your letter, you stated your belief that the existing dock installations are not part of the current application and therefore are not of issue. In fact, Mr. Jenney has a current subaqueous lands lease agreement with the State of Delaware for his occupancy of public subaqueous lands. When any lease is subject to change, the lease is reviewed in its entirety. In addition, Mr. Jenney has requested to install a new gangway and floating dock as part of the original application that Evelyn Maurmeyer submitted on April 22, 2019. The amended application dealing with the existing violations are not the only things WSLs is evaluating. I previously requested clarification as to why Mr. Jenney needed a second dock. According to the application he owns one 20’ 7” Boston Whaler and two personal watercrafts (“PWC”), with both PWCs proposed to be berthed on the previously authorized floating PWC dock. The structure that has been requested by Mr. Jenney could accommodate more than the three vessels. Does Mr. Jenney own additional boats that would require the need for additional moorings? Also, the current design could accommodate the mooring of 5 or more vessels which would require a minor marina permit. What is the intent/need of the proposed design? You are correct that Mr. Jenney has the right to wharf out, however, that right is balanced by WSLs’s regulatory authority. I am simply requesting clarification as to the purpose and need of the dock extension.
4. Your stated justification for the kayak storage and storage box was that they “are *de minimis* at best in terms of impact. And they provide necessary storage, to insure that items do not get washed away into the Rehoboth Bay.” This opinion does not address the requirements of section 4.6.5 of the Regulation and does not address my previously asked question. Additionally, the kayak storage and storage box do not meet the current terms and conditions of SPGP-20.

I hope this response clarifies the outstanding information required by WSLs in order to review and process your client’s application pursuant to all applicable laws. Please provide this information within 20 days from your receipt of this letter. If no response is received in that time, WSLs will deem the application withdrawn.

Sincerely,

Tyler Brown

Tyler Brown
Section Manager
Wetlands and Subaqueous Lands Section

EXHIBIT 6



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES &
ENVIRONMENTAL CONTROL
DIVISION OF WATER
89 KINGS HIGHWAY
DOVER, DELAWARE 19901

WETLANDS & SUBAQUEOUS
LANDS SECTION

TELEPHONE (302) 739-9943
FAX (302) 739-6304

May 22, 2020

SENT VIA EMAIL

Mr. Richard Abbott
Abbott Law Firm, LLC
724 Yorklyn Road, Suite 240
Hockessin, DE 19707

Re: Marshall Jenney Subaqueous Lands Lease Application Tax Parcel number 334-20.17-14.00

Mr. Abbott:

Mr. Jenney's application for a Subaqueous Lands Lease Supplemental to install a new floating dock and to authorize several unauthorized structures has been reviewed in accordance with the requirements of the Subaqueous Lands Act (*7 Del. C Ch. 72*) and the Regulations Governing the Use of Subaqueous Lands. Based on your persistent failure to provide the requested information needed to complete our review within the communicated timeline, as described in the letter dated January 27, 2020, the Department hereby denies Mr. Jenney's application without prejudice.

Any appeal of this decision to the Environmental Appeals Board must be submitted within 20 days of receipt of this letter, as set forth in *7 Del. C §6008 (c)*. For more information please visit the website at <https://dnrec.alpha.delaware.gov/environmental-appeals-board/>

In addition, according to the Notice of Violation (W-19-WSL-01) dated July 30, 2019, Mr. Jenney shall remove the remaining structures that were deemed to be violations. In accordance to the Notice of Violation, the Department is granting an additional 60-day period for obtaining voluntary compliance.

Failure to obtain voluntary compliance before July 21, 2020 will result in further enforcement action against Mr. Jenney including possible monetary fines pursuant to *7 Del. C § 7214*. Additionally, the Department, to the extent necessary, reserves the right to take additional enforcement actions regarding this and any other violations by Mr.

Delaware's good nature depends on you!

Jenney including, but not limited to, one or more of the following: an action under *7 Del. C* § 6005(b)(1) seeking penalties for past violations, an action under *7 Del. C* § 6005(b)(2) seeking penalties for continuing violations, an action in the Court of Chancery pursuant to *7 Del. C* § 6005(b)(2) seeking a temporary restraining order or an injunction, and the imposition of an administrative penalty and the recovery of the Department's costs and attorney's fees pursuant to *7 Del. C* §§ 6005(b)(3) & (c)(1). Nothing in the NOV or this letter shall be deemed to estop, or in any way preclude, any additional enforcement action for this or any other violations, including administrative and civil penalties for each day of violation, or an action for the recovery of Department costs expended in abating these violations.

Sincerely,

Tyler Brown

Tyler Brown
Section Manager
Wetlands and Subaqueous Lands Section

cc: Marshal Jenney – Via email
Evelyn Maurmeyer – Via email